

**EXHIBIT B**



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# Transcript of Lester D. Mardiks, Corporate Designee

**Date:** January 19, 2021

**Case:** Creative Hairdressers, Inc., et al., In Re:

**Planet Depos**

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1 UNITED STATES BANKRUPTCY COURT  
2 FOR THE DISTRICT OF MARYLAND  
3 (Greenbelt Division)

4 In Re: ) Chapter 11  
5 CREATIVE HAIRDRESSERS, INC., ) Case Nos.  
6 et al., ) 20-14583  
7 Debtors ) 20-14584-TJC

8 -----

9 Videoconference 30(b)(6) Deposition of  
10 CREATIVE HAIRDRESSERS, INC.

11 By and through its Designated Representative

12 LESTER D. MARDIKS

13 Tuesday, January 19, 2021

14 9:31 a.m. EDT  
15  
16  
17  
18  
19

20 Job No.: 347176

21 Pages: 1 - 125

22 Reported By: Dawn M. Hart, RPR/RMR/CRR

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1 Pursuant to Notice, before Dawn M. Hart,  
2 RPR/RMR/CRR and Notary Public.

3 A P P E A R A N C E S

4 ON BEHALF OF HC SALON HOLDINGS, INC.:

5 C. KEVIN KOBBE, ESQUIRE

6 DLA PIPER LLP(US)

7 The Marbury Building

8 6225 Smith Avenue

9 Baltimore, Maryland 21209

10 (410) 580-3000

11  
12 JAMILA JUSTINE WILLIS, ESQUIRE

13 1251 Avenue of the Americas

14 New York, New York 10020

15 (212) 335-4500

16 (via videoconference)

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1 A P P E A R A N C E S (Continued)

2 ON BEHALF OF THE DEBTORS:

3 JOEL I. SHER, ESQUIRE

4 SHAPIRO SHER GUINOT & SANDLER

5 250 West Pratt Street, Suite 2000

6 Baltimore, Maryland 21201

7 (410) 385-4277

8 (via videoconference)

9

10

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12

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17

18 ALSO PRESENT: Rodger Jacobson

19 Emily D'Alessandro, Paralegal

20 Leybert Sharp, AV Technician

21

22

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1 P R O C E E D I N G S

2 MR. SHER: Because it's a 30(b)(6), I think  
3 I -- we had a meet-and-confer last week, and  
4 Ms. Willis and Ms. Kobbe, I think we agreed that I'm  
5 going -- we'll have the following designations.

6 They have nine deposition topics, I believe,  
7 in their Notice. What we agreed was that Mr. Mardiks  
8 would be designated initially for Items 1, 2, 3 --  
9 well, some of 4, and 5 and 6. There's also in my mind  
10 certain of those topics have crossover to  
11 Mr. Jacobson, depending on how it goes. So I would  
12 see Mr. Jacobson also being able to testify to certain  
13 parts of 3, 4 primarily, 6, 7, and 8. I don't  
14 think -- I think there's overlap on some of their --  
15 some of the questions.

16 So that's sort of, I think the best we can  
17 do. I think that's what we discussed, but I thought  
18 it made sense to put that on the record at the  
19 beginning of the deposition.

20 LESTER D. MARDIKS

21 being first duly sworn or affirmed to  
22 testify to the truth, the whole truth, and nothing but



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1 the truth, was examined and testified as follows:

2 EXAMINATION BY COUNSEL FOR HC SALON HOLDINGS, INC.

3 BY MS. WILLIS:

4 Q Good morning. My name is Jamila Willis.  
5 I'm with the law firm of DLA Piper, and I represent HC  
6 Salon Holdings in the Chapter 11 cases of Creative  
7 Hairdressers, Inc. and Ratner Companies LC. This  
8 deposition is being recorded and transcribed by the  
9 Court Reporter. Please answer all questions verbally  
10 and not with physical movements, like a nod or a  
11 shrug, so that the Court Reporter can record your  
12 answers.

13 Can you please state your full name for the  
14 record?

15 A Lester D. Mardiks.

16 Q Are you aware you are being deposed in  
17 connection with the contested matter in the Chapter 11  
18 cases of Creative Hairdressers, Inc. and Ratner  
19 Companies LC?

20 A Yes, I am.

21 Q Have you ever been deposed before?

22 A No.

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1           Q     There are a few differences between a  
2     deposition and a typical conversation that I want to  
3     make you aware of. Please let me know if you  
4     understand each of them.

5                     Do you understand that you are testifying  
6     under oath and under the penalty of perjury?

7           A     Yes, I do.

8           Q     Do you understand that this means that you  
9     are sworn to tell the truth?

10          A     Yes.

11          Q     Is there any reason, such as a physical or  
12     mental condition or being under the influence of any  
13     medication or substances, that may affect your memory?

14          A     No.

15          Q     Is there any reason that may affect your  
16     ability to testify truthfully?

17          A     No.

18          Q     Is there any reason that may affect your  
19     ability to read documents that I may show you during  
20     the course of this deposition?

21          A     As long as I can wear my reading glasses,  
22     none whatsoever.

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1 Q As a reminder, please wait until I've  
2 finished my question before responding. If you need  
3 to have a question repeated, let me know and the Court  
4 Reporter can read it back to you. If you don't  
5 understand the question, or don't understand a term I  
6 may have used, or if you need me to otherwise rephrase  
7 the question, please let me know.

8 Please also let me know if you need a break  
9 and we can take one, but know that we will not be able  
10 to take a break while a question is pending.

11 Beginning with high school, can you please  
12 describe your education?

13 A I went to high school in suburban Kansas  
14 City. I was an undergrad at Washington University in  
15 St. Louis. I went to law school, Washburn University  
16 in Topeka, Kansas.

17 Q Do you have any professional certifications,  
18 licenses or other credentials?

19 A I have a license to practice law in Kansas,  
20 Washington, DC, and the Commonwealth of Virginia.

21 Q And have you ever been subject to any  
22 disciplinary action by a licensing body?

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1 A No.

2 Q Have you ever been subject to any  
3 disciplinary action by any court or tribunal?

4 A No.

5 Q Can you please describe your work experience  
6 starting after law school?

7 A After law school, I was -- in law school I  
8 was clerking for a two-person law firm in Topeka,  
9 Kansas. I worked there for a year practicing general  
10 law, pretty much anything that, that came into the  
11 practice that we could handle, and went into business  
12 with one of my clients after that first year in a  
13 small restaurant business. We opened five of them,  
14 and that was the largest it was ever going to get.

15 He was on the Board of Directors at a  
16 company called Payless Shoes, then Volume Shoe  
17 Corporation, and he helped me to land a position there  
18 as real estate counsel. I was there for four years,  
19 primarily working on all matter of real estate  
20 acquisition, investment, and administration,  
21 purchases, ground leases, leases in shopping centers,  
22 urban -- urban environments, mixed use developments.

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1 And from there I went -- I came to the  
2 Washington, DC area, met Dennis Ratner and went to  
3 work as real estate counsel for Ratner Companies --  
4 then it was simply Creative Hairdressers, Inc. --  
5 helping to open, open hair salons, and the position  
6 evolved into more responsibility. I became General  
7 Counsel, Vice President and Senior Vice President.

8 Q Okay. Can you give a year or around a year  
9 when you met Dennis Ratner?

10 A 1987, February.

11 Q Are you currently employed?

12 A Pardon me?

13 Q Are you currently employed?

14 A Yes, I am.

15 Q By whom are you currently employed?

16 A Ratner Companies.

17 Q And when did you begin working for Ratner  
18 Companies?

19 A I was a consultant with Ratner from March of  
20 '87 until July of '87, and I returned as an -- had to  
21 move from the Midwest. So I went back for a month,  
22 took care of things, and started back in July as an

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1 employee of Ratner Companies.

2 Q And during the course of your employment  
3 with Ratner Companies what positions or job titles  
4 have you held?

5 A Real estate counsel, Vice President and real  
6 estate counsel, Vice President/General Counsel, Senior  
7 Vice President/General Counsel.

8 Q In those roles, what were your job duties or  
9 responsibilities?

10 A Initially as real estate counsel it was to,  
11 to work on real estate matters, including the leasing  
12 of spaces in shopping centers, closing stores,  
13 renewing leases for stores, consulting on real estate  
14 matters. I had one employee at the time and an  
15 assistant, and then later gained additional  
16 responsibility for the general legal work of the  
17 company, and that involved, in addition to real  
18 estate, supervising outside counsel and over time,  
19 bringing things in-house as we gained expertise and  
20 the ability to do it, the licenses to do it.

21 Q Have you ever been disciplined or suspended  
22 during your employment with Ratner Companies?

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1 A No.

2 Q And to whom did you report during your  
3 employment at Ratner Companies?

4 A For a very short time to our Chief Operating  
5 Officer, Norman Pozez. And that's spelled P-O-Z-E-Z.  
6 Norman was responsible for bringing me to, to Ratner  
7 Companies. He'd been -- his family started Payless  
8 Shoes and he was working as a consultant with Dennis  
9 Ratner, so he knew me from Payless and introduced me  
10 to Dennis. So Norman was on his way out as I entered  
11 the company and was starting a construction and  
12 development business.

13 At that point I worked for the Chief  
14 Financial Officer, Ron Segal, until Ron's retirement  
15 in around 2009. And after Ron, I worked for the  
16 President of the company, Susan Gustafson. Subsequent  
17 to Susan's departure, for Phil Horvath, and then niche  
18 financial officer, Rich Gatti. I had a dotted line,  
19 always a dotted line reporting relationship with  
20 Dennis Ratner.

21 Q And for the record can you spell Susan's  
22 last name?

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1 A I can. G-U-S-T-A-F-S-O-N.

2 Q How would you characterize your relationship  
3 with Dennis Ratner?

4 A He treated me like I was a member of his  
5 family.

6 Q And you understand that you've been  
7 designated by Creative Hairdressers and Ratner  
8 Companies -- who I may throughout the course of this  
9 deposition call the Debtors -- to testify on specific  
10 topics today, correct?

11 A Sure.

12 MS. WILLIS: Can we pull up Exhibit A, which  
13 will be marked as Exhibit 14.

14 (Exhibit 14 was marked for identification  
15 and is attached to the transcript.)

16 AV TECHNICIAN: One second, please.

17 And for the record this is Exhibit 14.

18 THE WITNESS: Okay. If you see me on the  
19 video looking to my right it's because I have a larger  
20 monitor there. I'm not trying to be rude, I can just  
21 see it a little easier.

22 (Simultaneous speaking.)



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1 Q Take a moment to review Page 2 of Exhibit A.  
2 It's the last page of this document.

3 MS. WILLIS: If we can turn over control to  
4 the witness.

5 AV TECHNICIAN: Okay, perfect. Give me one  
6 second.

7 A So you want me to scroll to the last page?

8 Q Yes, please.

9 A Okay.

10 Q Do you recognize this document?

11 A I do.

12 Q What is it?

13 A It's a Notice for the deposition today.

14 Q And to confirm the topics that you're  
15 prepared to testify about, are you prepared to testify  
16 about the Deposition Topic No. 1 listed on this  
17 Notice?

18 A Yes.

19 Q Are you prepared to testify about Deposition  
20 Topic No. 2?

21 A Yes.

22 Q Are you prepared to testify about Deposition

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1 Topic No. 3?

2 A Yes, I am.

3 MR. SHER: I'm going to object -- by the  
4 way, I'm going to object to the form of these  
5 questions. We've already designated, but you can go  
6 ahead. I'm just objecting to this, the form of the  
7 questions you're asking in light of the record I put  
8 on at the beginning of the deposition, but please  
9 continue.

10 Q Are you prepared to testify about Deposition  
11 Topic No. 4?

12 A Yes.

13 Q Are you prepared to testify about Deposition  
14 Topic No. 5?

15 A Yes.

16 Q Are you prepared to testify about Deposition  
17 Topic No. 6?

18 A Yes.

19 Q Are you prepared to testify about Deposition  
20 Topic No. 7?

21 A To a lesser extent, yes.

22 Q Are you prepared to testify about Deposition

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1 Topic No. 8?

2 A It's to a lesser extent on the financial  
3 component of the topics, but yes on all of them.

4 Q What did you do to prepare for this  
5 deposition?

6 A Well, I had meetings with Mr. Sher and  
7 Richard Goldberg, his partner, and Emily D'Alessandro.  
8 We had in some of those meetings, pretty much most of  
9 those meetings, Rodger Jacobson, who's also on this,  
10 on this session this morning, who is our financial  
11 officer, Chief Financial Officer, and we went over  
12 many, many documents and emails.

13 Q Aside from Mr. Sher and his associates,  
14 partners, and colleagues, and Mr. Jacobson, were there  
15 any other people who were present at those meetings?

16 A No.

17 Q And how often did you meet to prepare for  
18 this deposition, or how many times did you meet?

19 A How many times? Under six. Somewhere  
20 between, you know, three, four, five, six. Some of  
21 them were short sessions, some of them longer. And we  
22 spent -- I should say that I spent considerable amount

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1 of time on my own going over, reading things.

2 Q How much time would you say that you spent  
3 preparing for this deposition?

4 A In the last week, well over 20 hours.  
5 Probably 30 plus.

6 Q And did you take any notes during the  
7 meetings or while you were reading documents to  
8 prepare for this deposition?

9 A I'm sorry, could you say that again, please,  
10 ask that again?

11 Q Did you take any notes during the meetings  
12 while you were preparing for the deposition?

13 A Yes, I did.

14 Q Did you review any documents to prepare for  
15 this deposition?

16 A Yes.

17 Q Which documents did you review?

18 MR. SHER: Objection.

19 A Many, many. Hundreds of emails with  
20 attachments. I mean the key, the key ones were the  
21 APA, the TSA. Asset Purchase Agreement is what I mean  
22 by APA, and Transition Services Agreement, TSA. But

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1 there were, there were discussions had around those  
2 and other, other documents. It would be in the  
3 hundreds.

4 MS. WILLIS: I'd like to ask the Court  
5 Reporter to pull up Exhibit B which will be marked as  
6 Exhibit 15, I believe.

7 AV TECHNICIAN: Yes, one second, please.

8 (Exhibit 15 was marked for identification  
9 and is attached to the transcript.)

10 AV TECHNICIAN: Exhibit No. 15 for the  
11 record. Thank you.

12 And, sir, you have access now.

13 THE WITNESS: Okay.

14 Q Do you recognize this document?

15 A I do.

16 Q What is it?

17 A Debtors' Motion to Compel HC Salon Holdings  
18 Inc. -- took the title away. Just a second.

19 MR. SHER: Can we give Mr. Mardiks control  
20 of the document, please.

21 AV TECHNICIAN: Yeah, he has control.

22 MR. SHER: Okay. Thank you.

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1           A     And the rest of what I was saying is, to  
2     Comply with the Transition Services Agreement.

3           Q     Are you generally familiar with the relief  
4     the Debtors are seeking by this motion?

5           A     I am.

6           Q     Can you turn to Page 3 of this document and  
7     review Paragraph 5.

8           AV TECHNICIAN: Let me help you real quick.

9           A     You said Paragraph 5 on Page 3.

10          Okay, yes.

11          Q     Are you familiar with any Asset Purchase  
12     Agreements between the Debtors and HC Salon?

13          A     Yes, I am.

14          Q     Can you describe what role, if any, you had  
15     with respect to preparation, negotiation and execution  
16     of the Asset Purchase Agreement?

17          MR. SHER: Objection. You can answer.

18          A     Almost none. Very little.

19          Q     Okay. Can you turn to Page 1 of this  
20     document and review the first paragraph.

21          A     Of this document that we're currently  
22     looking at?

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1 Q Yes, of this document.

2 A (Reviewing.)

3 First paragraph?

4 Q On Page 1.

5 A Okay. Yes.

6 MR. SHER: For the record, Ms. Willis, are  
7 you talking about the Introduction, or Paragraph 1?

8 MS. WILLIS: The first paragraph, so before  
9 the Introduction.

10 MR. SHER: Before the Introduction. Oh,  
11 thank you.

12 Q Are you familiar with any Transition  
13 Services Agreements between the Debtors and HC Salon?

14 A Yes, I am.

15 MS. WILLIS: Can I ask the Court Reporter --  
16 we're going to come back to this Exhibit, but may I  
17 ask the Court Reporter now to pull up Exhibit C, which  
18 will be marked as Exhibit 16.

19 (Exhibit 16 was marked for identification  
20 and is attached to the transcript.)

21 AV TECHNICIAN: Exhibit 16 for the record.

22 Q Do you recognize this document?

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1 A Yes, I do.

2 Q What is it?

3 A Order approving and authorizing the sale of  
4 substantially all of Debtors' assets pursuant to the  
5 Amended/Restated Asset Purchase Agreement, free and  
6 clear of all liens, claims, encumbrances and other  
7 interests; B, approving the assumption and assignment  
8 of certain executory contracts and unexpired leases  
9 relating thereto; and C, granting related relief.

10 MS. WILLIS: Can we also make sure that the  
11 witness has control of the document if he doesn't  
12 already.

13 AV TECHNICIAN: He does.

14 Sir, if you click on the document, you will  
15 be able to -- there you go, so you do have access.

16 THE WITNESS: Okay, thank you.

17 AV TECHNICIAN: You're welcome.

18 Q Can you turn to Page 30 of this document?

19 A (Complying.)

20 Easier this way.

21 Yes, here it is.

22 Q Do you recognize this document?



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1 A It's the Amended Asset Purchase Agreement.

2 Q I'd like to ask you some questions about the  
3 Asset Purchase Agreement, if I may call this document  
4 the Asset Purchase Agreement. You were not involved  
5 in drafting the Asset Purchase Agreement or its  
6 disclosure schedules; is that correct?

7 A I probably did have a minor role in putting  
8 together information for schedules, but I was not  
9 involved in the preparation or negotiation of the body  
10 of the document.

11 Q Did you review the Asset Purchase Agreement  
12 or any previous version of the Asset Purchase  
13 Agreement prior to --

14 A I have.

15 Q -- execution?

16 A I'm sorry. I have. I didn't mean to step  
17 on your question.

18 Q Did you have any discussions with  
19 representatives or advisors of the Debtors regarding  
20 any changes or prior versions of the Asset Purchase  
21 Agreement?

22 A I don't believe so.

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1 Q Did you discuss or negotiate the Asset  
2 Purchase Agreement, or any prior versions of the Asset  
3 Purchase Agreement, directly with any representative  
4 of HC Salon?

5 A I don't think so.

6 Q Did you review the Amended and Restated  
7 Asset Purchase Agreement, this version of the Asset  
8 Purchase Agreement, after it was executed?

9 A Yes.

10 Q What, if any, role did you have with respect  
11 to consummating the sale transaction or closing the  
12 Asset Purchase Agreement on June 4?

13 A Helping with due diligence primarily,  
14 gathering information.

15 Q What, if any, role did you have with respect  
16 to performance under the Asset Purchase Agreement?

17 MR. SHER: Objection. You can answer.

18 A I'm not sure I understand the question.

19 Q I'll rephrase.

20 A I'm sorry. Could you either repeat it or  
21 restate?

22 MR. SHER: Mr. Mardiks, let her rephrase.

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1 If you don't understand a question, please tell her  
2 that and she'll rephrase her questions.

3 THE WITNESS: Yeah, that's what I did say.

4 MR. SHER: Thank you.

5 Q Yeah, I can rephrase the question.

6 Did you have -- did you review the Asset  
7 Purchase Agreement in order to counsel people with  
8 respect to performance under the Asset Purchase  
9 Agreement?

10 MR. SHER: Objection.

11 A I -- we are performing under the Asset  
12 Purchase Agreement, and did at the time.

13 Q Have you reviewed the definitions under the  
14 Asset Purchase Agreement?

15 A Yes.

16 Q In your opinion, is there any ambiguity in  
17 the Asset Purchase Agreement as it relates to the  
18 payment of wind down costs?

19 A No.

20 Q I'd like to turn to Page 4 of the Asset  
21 Purchase Agreement.

22 AV TECHNICIAN: Sorry, let me help you real

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1 quick.

2 Q It's -- for ease, it's on Page 37 of the  
3 document.

4 AV TECHNICIAN: Page 37 of the PDF?

5 MR. SHER: Maybe, Ms. Willis, you could just  
6 go to a section or a reference. That might sometimes  
7 be easier with the paginations.

8 MS. WILLIS: Right.

9 Q I'd like you to review on this page the  
10 definition of assumed liabilities.

11 A (Complying.)

12 You want me to read it?

13 Q Just review it briefly. You don't have to  
14 read it.

15 A Okay.

16 Q What is your understanding of what an  
17 assumed liability refers to?

18 A A liability that the purchaser is going to  
19 assume, take on, be responsible for.

20 Q Can you point to where it says in this  
21 document that the purchaser has assumed the wind down  
22 costs of the Debtor?

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1           A     At the time of this document I'm not sure  
2     the wind down costs, or the concept of the wind  
3     down --

4                     (Court Reporter clarification.)

5           A     -- were known at this point in time, or we  
6     didn't, we didn't have a budget for wind down because  
7     we didn't know what it would be. It was discussed,  
8     but it was certainly not concrete at that point in  
9     time.

10          Q     And can you turn to Page 8 of the APA, which  
11     is Page 41 of the PDF.

12          A     (Complying.)

13          Q     There, there is no section reference on this  
14     page, but we're going to be discussing the definition  
15     of excluded liabilities.

16          A     Okay.

17          Q     What is your understanding of what an  
18     excluded liability refers to?

19          A     It's not in front of me on the page, but an  
20     excluded liability would be one that would not be  
21     assumed by the purchaser. Excluded from, from the  
22     transfer.

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1 Q Okay. I'm also not seeing the full page of  
2 this document. I'm not sure if there's a way --

3 AV TECHNICIAN: Let me help you.

4 Q It looks like it's been cut off.

5 AV TECHNICIAN: -- with the document real  
6 quick. It's going to be from the PDF Page No. 41.  
7 Are we on there?

8 MS. WILLIS: Yes.

9 AV TECHNICIAN: And what part of the  
10 document?

11 MS. WILLIS: Can we turn to the next page.  
12 I'm going to ask the witness about section --  
13 subsection (f).

14 AV TECHNICIAN: Okay. Let me -- sir, you  
15 have access now again.

16 THE WITNESS: Okay, thank you.

17 AV TECHNICIAN: You're welcome.

18 Q Can you review subsection (f) on this page?

19 A Yes.

20 (Reviewing.)

21 Q What is your understanding of what this  
22 provision provides?

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1           A     Well, this is one of several provisions  
2     defining what liabilities would be excluded from the  
3     transfer, the sale.

4           Q     And what is included in this provision, your  
5     understanding?

6           A     Liabilities for fees, costs and expenses  
7     that had been incurred, or that are incurred or owed  
8     by sellers in connection with this agreement or the  
9     administration of the bankruptcy cases, including all  
10    fees and expenses of professionals engaged by sellers,  
11    and administrative expenses and priority claims  
12    accrued through the closing date, and specified  
13    post-closing administrative wind down expenses of the  
14    bankrupt estates pursuant to the Bankruptcy Code,  
15    which such amounts shall be paid by sellers from the  
16    proceeds collected in connection with the excluded  
17    assets, and all costs, expenses incurred in connection  
18    with the, 1, negotiation, execution and consummation  
19    of the transactions contemplated under this agreement  
20    and each of the other documents delivered in  
21    connection herewith; 2, the negotiation, execution and  
22    consummation of the DIP financing agreement; and 3,

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1 the consummation of the transactions contemplated by  
2 this agreement, including any retention bonuses,  
3 success fees, change of control payments, and any  
4 other payment obligations of sellers payable as a  
5 result of the consummation of the transactions  
6 contemplated by this agreement and the documents  
7 delivered in connection herewith.

8 Q And can you turn to Page 17 of the Asset  
9 Purchase Agreement, which is Page 50 of the PDF,  
10 Section 2.3.

11 AV TECHNICIAN: Let me assist with the  
12 document, please.

13 Okay, sir, you have access.

14 Q Do you recall how much HC Salon paid in cash  
15 to fund what's referred to here as the wind down?

16 A At this point in time?

17 Q Yes.

18 A This section calls for the, a fund of --  
19 funding of \$100,000.

20 Q And the term wind down is capitalized in  
21 this section. What is your understanding what a  
22 capitalized term means in this document?



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1           A     It's a defined term elsewhere in the  
2 agreement.

3           Q     Do you have an understanding of what wind  
4 down means in the context of this agreement in your  
5 own words?

6           A     Well, in my words wind down is bringing to a  
7 conclusion through process the existence of the  
8 bankrupt companies.

9           Q     And the \$100,000 that you mentioned, that  
10 amount was paid, correct?

11          A     To my knowledge.

12          Q     Are you aware of anywhere in the APA that  
13 provides that HC Salon will pay wind down costs in  
14 excess of \$100,000?

15          A     Indirectly, yes.

16          Q     Can you point to that provision?

17          A     Where, where the Transition Services  
18 Agreement is referenced, it's, it's in here, and the  
19 fact that the word fund is used here implies that it's  
20 not the end of it. In Section 2.3, the fact that we  
21 only excluded specified, specified portions of the  
22 liabilities related to wind down that weren't

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1 specified. That would be the company's position.

2 Q Are you aware of anywhere in the APA that it  
3 states that the reimbursable or wind down cost  
4 obligations are not capped or limited other than what  
5 you just referenced?

6 A No.

7 MR. SHER: Can I have a point of order with  
8 Mr. Kobbe and Ms. Willis? I'm assuming the standard  
9 protocol is you reserve all objections except for  
10 form, correct?

11 MR. KOBBE: That is correct.

12 MR. SHER: I just want to make sure we have  
13 the same protocol. I just -- thank you.

14 MR. KOBBE: We do.

15 MR. SHER: Thank you.

16 MS. WILLIS: Okay. I don't believe that  
17 there is a question pending, but I'm going to ask the  
18 Court Reporter to pull up Exhibit 15, the Debtors'  
19 Motion to Compel, and turn to Paragraph 35 on Page 15.

20 AV TECHNICIAN: Is everybody able to see the  
21 document, just to make sure?

22 THE WITNESS: I can see it.

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1 AV TECHNICIAN: Thank you.

2 Q The last sentence of this paragraph  
3 contemplates a separate wind down budget.

4 A The last sentence -- I'm not sure I can see  
5 the last sentence. The bottom of my page says the  
6 Amended APA. Is that the last sentence?

7 MS. WILLIS: Can we scroll down just a bit.

8 A There we go.

9 Q The beginning of the last sentence.

10 AV TECHNICIAN: Let me -- sorry, it just --  
11 Mr. Mardiks, you have access to my computer right now  
12 so let me get a second.

13 A I can see the entire sentence now.

14 Q Is it your understanding that HC Salon  
15 agreed to fund in full the wind down budget that would  
16 be included in a separate budget?

17 A Yes, that's the company's position.

18 Q Where is that contained in the APA? Is  
19 there any support for that interpretation?

20 A Well, it refers to the Transition Services  
21 Agreement yet to be developed, which would address the  
22 wind down.

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1 Q And aside from the APA and the Transition  
2 Services Agreement, are there any other documents that  
3 would support that interpretation?

4 A Per likely some of the conversations that  
5 were held in emails that were sent back and forth  
6 between attorneys for companies, parties to these  
7 agreements.

8 Q Do you have any communication with  
9 representatives of HC Salon that support this view?

10 A Representatives? To certain aspects of it,  
11 yes, I do.

12 MS. WILLIS: Can the Court Reporter turn  
13 back to Exhibit 16, which is the Sale Order attaching  
14 the Asset Purchase Agreement, and turn to Page 51 of  
15 the document, which is Page 18 of the Asset Purchase  
16 Agreement, Section 2.5.

17 Q Is it your understanding that the Transition  
18 Services Agreement was a closing deliverable under the  
19 Asset Purchase Agreement?

20 A (Reviewing.)

21 Give me just a second, please.

22 If it was to be, it's not mentioned in 2.5.

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1           Q     Is it your understanding that the Asset  
2     Purchase Agreement specifically contemplated that the  
3     parties would enter into a Transition Services  
4     Agreement?

5           A     Yes, it does.

6           Q     Why was a Transition Services Agreement  
7     necessary in your view?

8           A     In my view, because -- several reasons, but  
9     chiefly because all of this was occurring during the  
10    beginning of the pandemic. Salons that the company  
11    operated, the sellers operated, were shut down, many  
12    employees were furloughed. The primary objective was  
13    to get an agreement, get people paid. Funds were  
14    dwindling. That was critical.

15               And the transition services were because the  
16    purchasers weren't equipped at that moment in time to  
17    step in and effectively operate salons which would be  
18    opening at some point soon down the road that had to  
19    be planned for. They needed our systems, our bank  
20    accounts, our people, pretty much everything you would  
21    need to run a company of this size.

22           MS. WILLIS: Can the Court Reporter turn to

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1 Page 40 of this document, which is Page 7 of the Asset  
2 Purchase Agreement, with the defined term excluded  
3 assets.

4 A Okay. It starts here and goes on to the  
5 next page.

6 Q Are you familiar with the term excluded  
7 asset?

8 A Yes.

9 Q What is your understanding of what an  
10 excluded asset is under the APA?

11 A Are we looking at the Asset Purchase  
12 Agreement here?

13 Q Yes.

14 A Okay. Excluded assets would be those that  
15 are not to transfer, are not being sold as a part of  
16 this agreement.

17 Q If I were to say that excluded assets  
18 include assets to which HC Salon would otherwise be  
19 entitled but determined to leave with the Debtors,  
20 would you agree?

21 A Probably comes pretty close if not exact.  
22 I'd have to think about it to say with certainty, but

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1 I think that's a pretty good definition.

2 Q Can we turn to Page 14 of this document,  
3 which is Page 14 of the Sale Order, Paragraph 7.

4 What is your understanding of this provision  
5 of the Sale Order, what it says?

6 A This relates to settlement from, from  
7 litigation to which the seller was entitled, involved  
8 Visa and MasterCard and it involved the merchant fees  
9 being excessive. And so the proceeds from the suit  
10 were paid to those who were damaged, the merchant, the  
11 sellers were in that group. And the reason it's  
12 excluded is because it was unencumbered by M&T Bank  
13 and the rest of the companys' assets that were  
14 included in the sale were part of that lien, part of  
15 the M&T liens.

16 Q You said that the proceeds were unencumbered  
17 by M&T Bank?

18 A Yes.

19 Q Were they unencumbered in general, were  
20 there no liens on those proceeds?

21 A There was no viable lien because there was  
22 none specifically filed.

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1 Q Did HC Salon have a lien or any legal rights  
2 to the settlement proceeds in your view?

3 A In negotiation, no. It's excluded here in  
4 this agreement. It was agreed to be excluded.

5 MS. WILLIS: Pull up Exhibit D, which will  
6 be Exhibit 17.

7 AV TECHNICIAN: One second, please.

8 (Exhibit 17 was marked for identification  
9 and is attached to the transcript.)

10 AV TECHNICIAN: Exhibit 17.

11 Q Can we turn to the second page.  
12 Do you recognize this document?

13 A Transition Services Agreement.

14 Second page --

15 Q Were you involved -- I'm sorry.

16 A I am, too. I stepped on your words. Going  
17 to the second page.

18 Q Apologies.

19 Not the second page of the Transition  
20 Services Agreement, the second page of the document so  
21 that you can see its title. Can we just --

22 AV TECHNICIAN: Let me help. Let me go



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1 back.

2 THE WITNESS: Give me a hand.

3 AV TECHNICIAN: Yeah.

4 Q Were you involved in the drafting of the  
5 Transition Services Agreement or its schedule?

6 A Other than, than helping with, with the  
7 margins with some items for schedules, I don't think I  
8 was at all.

9 Q Can you describe with specificity the roles  
10 you had with respect to drafting, negotiation and  
11 execution of the Transition Services Agreement or its  
12 schedule?

13 You mentioned at the margins. What does  
14 that mean?

15 A Well, if, for instance, anything related to  
16 rejecting or moving forward with locations, salon  
17 locations, I was involved in some of those decisions  
18 in putting together schedules related to that, or  
19 related to the contracts that were being assumed and  
20 being rejected. But not the, not the words of the  
21 body of the agreement, nothing with the concepts.

22 Q Did you review the Transition Services

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1 Agreement or its schedule prior to its execution?

2 A Probably. I probably did see it before it  
3 was signed.

4 Q Did you have any discussions with  
5 representatives or advisors of the Debtors regarding  
6 the Transition Services Agreement prior to its  
7 execution?

8 A If I did, and I probably did, they were  
9 minor, not relating to major aspects of the agreement.

10 Q Without revealing any privileged  
11 information, can you describe the nature of those  
12 discussions? If you remember them.

13 A You know, it would be creating them.  
14 It's -- they're not things that I remember. It was a  
15 busy point in time and I was asked to help put  
16 schedules together about things that I was directly  
17 working on or people that worked for me were directly  
18 working on.

19 It was, it was a collaboration of a lot of  
20 little parts. And to describe the discussions about  
21 it, they were mostly had by counsel on both sides,  
22 people with expertise to put something like this

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1 together.

2 Q Did you discuss or negotiate the Transition  
3 Services Agreement with any representative of HC  
4 Salon, including their counsel?

5 A No, I did not.

6 Q What, if any, role did you have, did you  
7 have or do you have, with respect to performance under  
8 the Transition Services Agreement?

9 MR. SHER: Objection.

10 A I'm one of those few people that are now  
11 responsible for the wind down of Ratner Companies and  
12 Creative Hairdressers, Inc. I'm an officer of the  
13 company.

14 Q When you say responsible for the wind down  
15 of Creative Hairdressers and Ratner Companies, Inc.,  
16 what do you mean?

17 A Well, taking care of remaining  
18 administrative affairs and making decisions, signing  
19 documents, addressing issues, dealing with  
20 correspondence, with people through the mail, through  
21 email, phone calls, taking care of every, every  
22 remaining step that will be required to satisfy our

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1 fiduciary obligations to the company and those who are  
2 interacting with it.

3 Q When you say addressing issues, what do you  
4 mean? What sort of issues are you addressing?

5 A There are -- there are people that contact  
6 us with questions, whether it be former employees,  
7 employees that were employed by Ratner Companies,  
8 Creative Hairdressers, Inc., that are no longer  
9 employed by HC, people who are employed by both,  
10 vendors, similar kinds of circumstances, that had  
11 relationships in the past, some that have  
12 relationships that continued on that need help from us  
13 dealing with matters that are before the Court,  
14 preparing and managing budgets.

15 In doing our job, we're doing it in such a  
16 way that we try to do it as efficiently, meaning doing  
17 it well, but inexpensively, things of that nature.

18 Q Do you believe that there's any ambiguity in  
19 the Transition Services Agreement as it relates to  
20 payment of wind down costs and expenses?

21 A No, I don't.

22 Q What is your understanding of the purpose of

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1 the TSA?

2 A The purpose of the TSA was to cover a  
3 transitional period of time in which the buyers needed  
4 help from the sellers to run the business and to get  
5 themselves -- the buyer to get itself up-to-speed to  
6 do everything that needed to be done in its own  
7 behalf. And so during the course of the transition,  
8 the seller would become decreasingly involved until no  
9 longer needed.

10 Q Can you review on this page the recitals of  
11 the Transition Services Agreement, specifically the  
12 second recital.

13 A (Complying.)

14 I'm sorry, the second what?

15 Q Recital.

16 A Oh, okay.

17 Q The second whereas paragraph.

18 A (Reviewing.)

19 Okay, I just read it.

20 Q Is this consistent with your understanding  
21 of the purpose of the Transition Services Agreement --

22 A Yes, it is.

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1 Q -- this recital?

2 Does it state anywhere in this second  
3 recital or the recital just before it that the purpose  
4 of the Transition Services Agreement is that HC Salon  
5 would be paying for all wind down costs to avoid  
6 administrative insolvency of the Debtors?

7 A In these two paragraphs does it say  
8 specifically that?

9 (Reviewing.)

10 It doesn't say specifically that. It just  
11 refers to the APA which talks about wind down and it's  
12 elaborated on more in the Transition Services  
13 Agreement.

14 Q Was your understanding that upon execution  
15 of this Transition Services Agreement that HC Salon  
16 lacked the necessary infrastructure to operate salons  
17 it acquired under the Asset Purchase Agreement?

18 A I'm sorry, the first part of your question,  
19 if you could just repeat the whole thing it would help  
20 me.

21 Q I can repeat it.

22 Is it your understanding that HC Salon

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1 lacked the necessary infrastructure to operate the  
2 salons it had acquired under the Asset Purchase  
3 Agreement?

4 A You mean as of now or as of then?

5 Q As of the entry into this agreement, this  
6 Transition Services Agreement.

7 A Yeah, that was the purpose of this  
8 agreement, to help, help the buyer run the business.  
9 You know, when I say help, that includes using our  
10 systems, our banks, our -- our people. Our being the  
11 seller. It was, it was a collaborative situation for  
12 a period of time.

13 Q And just to clarify on the record, when you  
14 say the seller, you mean the Debtors, Creative  
15 Hairdressers, Inc. and Ratner Companies LC?

16 A Yes. Yes.

17 Q What was your understanding of how long the  
18 Transition Services Agreement was intended to last?

19 A Three months, unless terminated sooner.

20 Q Can we turn to Page 9 of the Transition  
21 Services Agreement, which is Page 10 of the document,  
22 Section 9.1.

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1 And to clarify, the term was three months  
2 from what date?

3 A What date was -- I think the date that this  
4 became effective was June 4.

5 Q So that would be September 4th, 2020,  
6 correct?

7 A Correct.

8 You wanted Section 9.1 up?

9 Q Yes, Section 9.1.

10 And the document contemplates that the  
11 Transition Services Agreement in its term can be  
12 terminated prior to the three months, correct?

13 A Yes.

14 MS. WILLIS: Can we pull up Exhibit E, which  
15 will be marked as Exhibit 18.

16 AV TECHNICIAN: Sure.

17 (Exhibit 18 was marked for identification  
18 and is attached to the transcript.)

19 AV TECHNICIAN: Exhibit 18 for the record.  
20 One second.

21 Sir, you have now access to the document.

22 THE WITNESS: Okay.



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1 Q Do you recognize this document?

2 A Yes, I do.

3 Q What is it?

4 A It's a notice sent to the company, sent to  
5 me on behalf of the company, stating that the TSA  
6 would be terminated effective July 17th, with  
7 exception of stated contracts that would continue on.

8 Q What was your understanding of the effect of  
9 the delivery of this document?

10 A It's clear on its face, I think, that HC  
11 wished to terminate the services, except for  
12 continuing to use these, these contracts, which is  
13 what it says. Now whether or not that's how it was  
14 played out is another matter, but that's what we were  
15 told in this letter.

16 Q What is your understanding of how, to use  
17 your term, how it played out?

18 A I don't see our bank accounts listed here,  
19 Our services from some of the people who were still  
20 employed in helping HC directly. There were things  
21 that it carried over for a period of time other than  
22 these agreements that are listed.

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1 Q Aside from bank accounts and employment  
2 services, what other things carried over?

3 A Some of the other systems were still being  
4 used; IT-related particularly, some storage services,  
5 some things related to the bankruptcy. Use of the  
6 bank accounts alone triggered fees for the U.S.  
7 Trustee, noticing services. There were a number of  
8 things. I couldn't necessarily say that I could give  
9 you all of them at the moment, but there were a number  
10 of these kinds of things that some -- some were ceased  
11 and some weren't.

12 Q Okay. I want to go through what you just  
13 described just to clarify the record and make sure I'm  
14 understanding.

15 Are you saying that following delivery of  
16 the letter, that various IT systems were used by HC  
17 Salon, various of the Debtors' IT systems?

18 A Yes. Yes, I am saying that.

19 Q Okay. Are you saying that following the  
20 delivery of this letter HC Salon used the Debtors'  
21 bank accounts?

22 A Yes.

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1 Q Are you saying that following the delivery  
2 of this letter HC Salon used services from the  
3 Debtors' employees for its benefit?

4 A Since July 14 -- yes, yes, I do know that at  
5 least one.

6 Q When you mentioned storage services, are you  
7 referring to data storage, electronic storage?

8 A Some paper files storage.

9 Q And are you saying that following the  
10 delivery of this letter HC Salon used the Debtors'  
11 storage services?

12 A I don't think that contract was rejected.

13 Q Do you know the contact counter party of  
14 that contract?

15 A I -- I could get that information for you.  
16 I don't have it in front of me.

17 Q Are you saying that following the delivery  
18 of this letter HC Salon used the Debtors' noticing  
19 services?

20 A Well, actually it was at their  
21 recommendation that we were using that company, and it  
22 does -- it did continue.

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1 Q Which company was at the recommendation --

2 A Epiq. Epiq.

3 Q And what services did Epiq provide?

4 A Noticing in the bankruptcy.

5 Q Did HC Salon require noticing in the  
6 bankruptcy following July 14, 2020?

7 A I'm not sure, but I could -- again, I could  
8 get that information for you.

9 Q Are the Debtors obligated by statute or  
10 court rules that you know to hire a noticing agent in  
11 their bankruptcy case?

12 A I don't -- I don't know the answer to that.

13 Q Are the Debtors seeking payment of any  
14 expenses or fees for services that were provided after  
15 July 14, 2020?

16 A Say again, or did what occur after July 14?

17 Q Are the Debtors seeking services for the  
18 reimbursement of fees or expenses for services  
19 provided after July 14, 2020?

20 A It's a mix of things. It's probably mostly  
21 wind down, but there were services that were provided  
22 after July 14th.

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1 Q At any point during the pendency of the  
2 Transition Services Agreement did the Debtors believe  
3 that HC Salon was in breach of the Transition Services  
4 Agreement?

5 A I'm not aware of any. There may have been  
6 little things that I wouldn't call breach; slow  
7 payment, things like that.

8 Q And the Debtors never accused or called a  
9 breach under the Transition Services Agreement; is  
10 that correct?

11 A Not that I know of.

12 Q What is your understanding of when the  
13 Transition Services Agreement terminated? What date.

14 A September 4, 2020.

15 MS. WILLIS: I'd like to go back to Exhibit  
16 17, the Transition Services Agreement.

17 AV TECHNICIAN: One second, please.

18 MS. WILLIS: And can we go to Page 16 of the  
19 Transition Services Agreement, which is Page 17 on the  
20 document.

21 Q Do you know what this document is, this  
22 portion of the document?

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1           A     I do, Schedule of Services.

2           Q     Is it your understanding that the transition  
3 services were limited to the services listed on this  
4 document?

5           A     By the terms of the agreement it would be.  
6 As to whether or not there was cooperation outside of  
7 this, it could have occurred, but this was pretty  
8 encompassing.

9           Q     Are you aware of any cooperation outside of  
10 this document?

11          A     I'd have to review this agreement and go  
12 back through, through just memory and notes and emails  
13 to say if there was anything. If there was anything,  
14 it would have been somewhat minor. This anticipated  
15 the scope.

16               MS. WILLIS: And does the witness have  
17 control of this document so he can scroll through if  
18 needed?

19               AV TECHNICIAN: Yes.

20               THE WITNESS: Okay. Yes, I do.

21          Q     Do you generally have an understanding of  
22 the payments HC Salon made under the Transition

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1 Services Agreement?

2 A Other than from budgets I don't. I mean I  
3 didn't receive or process checks or electronic  
4 payments so I don't know when it occurred or -- if it  
5 weren't for financial reports, I wouldn't know if they  
6 occurred.

7 Q Do you have any reason to believe that HC  
8 Salon did not fully reimburse the Debtors for the  
9 services listed on the Schedule of Services?

10 A I -- at present the services under the  
11 Transition Services Agreement, I think if anything is  
12 unpaid, it's not, it's not something significant.  
13 It's -- except -- come after the Transition Services  
14 Agreement.

15 So I know that during this time there were  
16 things that we had to discuss and we had to ask to be  
17 paid that I believe for the most part, if not the  
18 entire part, they were paid.

19 Q You previously mentioned, I guess we can  
20 call them areas of coordination that you believed HC  
21 Salon owed the Debtors reimbursement for. For  
22 example, one was noticing services. Are those listed

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1 on the Schedule of Services?

2 A I'd have to look at it.

3 MR. SHER: Objection.

4 Q I'll give you --

5 A I don't see it specifically here, and it --  
6 it may be one of those things that goes beyond the  
7 TSA, into the wind down.

8 Q When you say beyond the TSA, into the wind  
9 down, what do you mean?

10 A Well, after the specified services here were  
11 no longer needed and the Transition Services Agreement  
12 no longer in effect, there's still the wind down to  
13 consider. Companies are not wound up yet and the  
14 duties that we discussed earlier are being performed.

15 Q I'm sorry, could you repeat that last part?  
16 I didn't hear --

17 A I said there's a point in time when the  
18 Transition Services Agreement is no longer in effect,  
19 and then some of these things that were going on  
20 during the transition services period, during its  
21 term, were still going on and they become part of the  
22 wind down and they may not be specified here. They're



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1 wind down expenses.

2 So you asked me specifically about noticing.  
3 I don't see it specifically mentioned here. That was  
4 the answer to your question.

5 Q This is where virtual depositions get a  
6 little bit difficult because I'm going to ask you to  
7 look at two documents.

8 MS. WILLIS: Can we turn back to Exhibit B,  
9 which is Exhibit 15, Paragraph 29, which is on Page 12  
10 of the document.

11 MR. SHER: Sorry, which one, Ms. Willis?

12 MS. WILLIS: This is the Motion to Compel.

13 MR. SHER: Okay, thank you.

14 Q The last sentence of this paragraph  
15 describes categories of fees and costs. I'm going to  
16 ask you to review those categories of fees and costs  
17 and let me know where in the Schedule of Services they  
18 appear, if at all.

19 A Okay.

20 (Reviewing.)

21 MS. WILLIS: And for the technician, we may  
22 need to go back to Exhibit 17, Page 17 through 19 of

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1 that document, or rather Page 17 through 20 of that  
2 document.

3 AV TECHNICIAN: Okay. Let me know when you  
4 want to go there and I can go there.

5 Sorry. You said Page 17, or Page 19,  
6 counsel?

7 MS. WILLIS: Page 17 of Exhibit D, Exhibit  
8 17.

9 AV TECHNICIAN: Okay.

10 MR. SHER: Is there --

11 AV TECHNICIAN: Just to make sure, the  
12 witness has access to this document.

13 THE WITNESS: Okay.

14 Q The question is whether or not the  
15 categories of fees and costs listed in Paragraph 29 of  
16 the motion are listed in the Schedule of Services of  
17 the TSA.

18 A I think they're two different things. One  
19 discusses wind down, and this discusses the actual  
20 transition.

21 Q Could you describe what you mean by that,  
22 two different things?

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1           A     Well, I -- in this Schedule of Services,  
2     these are services during the transition, not the wind  
3     down.

4           Q     Are all of the amounts that the Debtor is  
5     seeking related to wind down costs?

6           MR. SHER: Objection.

7           A     That's -- that's much of it, but I'm not --  
8     I'm not prepared to say that some of it isn't part of  
9     the transition. I think it's, it's generally the wind  
10    down, though.

11          Q     And are these wind down costs -- have any of  
12    them arisen since the termination of the Transition  
13    Services Agreement?

14          MR. SHER: Objection.

15          A     Have any of what?

16          Q     Any of the wind down costs that you  
17    described.

18          A     Yes.

19          Q     On what basis is HC Salon responsible for  
20    costs for a period following the termination of the  
21    Transition Services Agreement?

22          A     Because they agreed to -- signed an

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1 agreement with -- agreeing to fund the reasonable  
2 costs of the wind down.

3 Q Can you point me to where on the agreement  
4 it says that?

5 A It's in the Transition Services Agreement.  
6 Section 5.2, I believe.

7 MS. WILLIS: Can we turn to Section 5.5 of  
8 the Transition Services Agreement, which is on Page 8  
9 of this document.

10 AV TECHNICIAN: Let me get access back.

11 Okay, sir, you have access now.

12 Q Were any invoices provided to HC Salon  
13 pursuant to this provision?

14 A Budgets were provided to serve as invoices,  
15 essentially, and we adhered to them. And there's a  
16 course of dealing between the parties where many  
17 things were being done throughout based on  
18 conversation, based on email, based on understanding,  
19 based on presenting budgets and being given a nod  
20 without specific written response necessarily, that  
21 that was the course of dealing.

22 Q How often were budgets provided instead

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1 of --

2 A Monthly.

3 Q Who prepared those budgets?

4 A We did.

5 Q When you say we, who are you referring to?

6 A Rodger Jacobson, with assistance from, from  
7 myself and from, from counsel.

8 Q And what was the process after the monthly  
9 budget was provided? How did you go about seeking  
10 payment?

11 A I think primarily Mr. Sher would talk with  
12 his counterpart Mr. Chesley.

13 Q And were those budgets, these monthly  
14 budgets, provided to counsel, to HC Salon or to a  
15 representative of HC Salon?

16 A I believe to a representative of HC Salon.

17 Q Do you have copies of these budgets?

18 A I do.

19 Q Do you know approximately how many budgets  
20 were prepared over the course of --

21 A Well, some were -- some were prepared for,  
22 for review and approval, and some were final, but they

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1 were pretty consistent. Things didn't vary much, and  
2 actual costs didn't vary much from them; I'm pleased  
3 to say that. But how many? I don't know, half a  
4 dozen. That's an estimate.

5 Q When you say review and approval, whose  
6 review and whose approval?

7 A There were two people, you know, that I was  
8 primarily in communication with regularly; Rodger  
9 every day and Joel Sher a few times each week.

10 Q And was it Rodger and Joel who would review  
11 and approve the budget?

12 A Well, we would discuss it, the three of us  
13 would discuss them, typically.

14 Q Were only final budgets sent to HC Salon?

15 A I -- I can't say. I don't -- I was not the  
16 one doing it.

17 Q Do you know who was the one sending it to HC  
18 Salon?

19 A I -- probably Mr. Sher.

20 Q You mentioned that approximately six budgets  
21 were prepared. Would that be six final budgets and  
22 then there were other versions of those budgets prior,

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1 or in total six budgets?

2 A Yeah, we were looking at different versions  
3 of budgets. It was close to the time to review them,  
4 so -- and changes would be made, and then there would  
5 be back-and-forth emails and phone calls regarding  
6 items that were in question.

7 Q Are there any non-privileged emails that  
8 show changes made to budgets?

9 A I don't think so.

10 Q Is it the Debtors' position that HC Salon is  
11 responsible for paying all remaining professional fees  
12 in connection with the wind down?

13 A Absolutely.

14 Q And is it the Debtors' position that HC  
15 Salon is responsible for paying the payroll of all the  
16 Debtors' remaining staff?

17 A Yes.

18 Q Is it the Debtors' position that HC Salon is  
19 also responsible for paying the cost of issuance of  
20 W-2s?

21 A Yes.

22 Q Is it the Debtors' position that HC Salon is

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1 responsible for paying the cost of the Debtors' tax  
2 returns?

3 A Not the taxes, but preparing them, yes.

4 Q Is it the Debtors' position that HC Salon is  
5 responsible for paying miscellaneous costs associated  
6 with winding down the Debtors' estate, for example,  
7 the noticing and claims agent fees?

8 A Yes. Yes.

9 Q Are there any costs that the Debtors believe  
10 they are responsible for paying?

11 A Are there any -- I'm sorry, are there any  
12 costs --

13 Q That the Debtors believe -- any wind down  
14 costs that the Debtors believe they are responsible  
15 for paying.

16 A Without any compensation?

17 Q Correct.

18 A The only thing that would be in that  
19 category would be such costs that are unreasonable.

20 Q Are there unreasonable costs in your view?

21 A No, no, we've been diligent about -- well --  
22 MR. SHER: I think he broke up again, Madam



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1 Reporter.

2 A What I said was I think there are none, and  
3 I think that we've been diligent managing this well  
4 with few people.

5 Q Are there any communications with  
6 representatives of HC Salon that support the Debtors'  
7 view?

8 A I know of one off the top of my head, an  
9 email saying that, that the fees of Shapiro Sher would  
10 be paid, but they haven't.

11 Q Do you know who that email was sent by?

12 A Yes, Rick Chesley.

13 Q Does that email discuss payroll for the  
14 Debtors' remaining staff?

15 A Not that email.

16 Q Are there any emails that discuss --

17 A Yeah, there was -- yeah, there was -- I can  
18 think of one. There were probably several that did  
19 question the staffing.

20 Q And in the emails questioning the staffing,  
21 who sent those emails?

22 A The one that I can directly think of was

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1 Phil Horvath.

2 Q Is Phil Horvath a representative of HC  
3 Salon?

4 A At that point in time I think he was acting  
5 as the representative of HC Salon, yeah, even though  
6 his employer wasn't HC.

7 Q What was his relationship to HC Salon at  
8 that point in time?

9 A Well, I think he believed he was going to  
10 continue to be Chief Operating Officer or President or  
11 some combination thereof.

12 Q And Mr. Horvath sent an email taking the  
13 position that HC Salon was responsible for the --  
14 paying the payment of all payroll of remaining staff?

15 A No. He was, he was trying to make it less  
16 costly by limiting the pay of individuals. The  
17 opposite.

18 Q Do you have an idea of when, maybe a month,  
19 in which the email was sent?

20 A That was probably in June.

21 Q Was it following the execution of the TSA on  
22 June 4, 2020?

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1           A     Probably. If you want to give me a second  
2     and allow me to look at a note I can probably pinpoint  
3     the date.

4           MS. WILLIS: Can you produce that email to  
5     us?

6           MR. SHER: We'll review any requests for  
7     documents at the conclusion of the depositions today.  
8     We're not going to do it seriatim.

9           Q     Are you aware of any communications with  
10    representatives of HC Salon that support the Debtors'  
11    view that HC Salon is responsible for paying the costs  
12    of the issuance of the Debtors' W-2s or the cost of  
13    preparation of the Debtors' tax returns?

14          A     Am I aware of anything from HC saying that  
15    they're responsible for that?

16          Q     Correct.

17          A     Their signature on this agreement. It  
18    doesn't specify those items necessarily, but it's part  
19    of the reasonable costs of the wind down of a company  
20    to honor its legal obligations to its employees. And  
21    some of those employees are employed by HC now.

22          MS. WILLIS: Can we turn to Section 5.2 of

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1 the TSA, which is Page 7 of the document just before  
2 this one.

3 Q Is it your belief that this provision  
4 supports the Debtors' view that HC Salon is required  
5 to pay the entirety of the Debtors' wind down costs?

6 A I think it does -- well, the entire  
7 reasonable costs, yes.

8 Q Even if those costs were incurred after the  
9 termination of the TSA?

10 A That's when the -- most of the wind down  
11 occurs, yes.

12 Q How much cash do the Debtors have on hand,  
13 approximately?

14 A Approximately somewhere in the neighborhood  
15 of \$2 million, but you can ask Mr. Jacobson in his  
16 deposition.

17 Q So going back to Section 5.2 of the  
18 Transition Services Agreement, which is up here, is  
19 written consent required, is HC Salon's written  
20 consent required?

21 A In the -- that last sentence it says -- I'm  
22 just -- where possible, inform the purchaser -- where

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1 possible, inform the purchaser of the actual  
2 reasonable -- reasonably estimated amount, such  
3 expenses before they are incurred, and shall not incur  
4 such expenses without the purchaser's prior written  
5 consent, but that refers back to where possible. All  
6 costs incurred must be presented with supporting  
7 documentation, such as receipts. So that's my answer.

8 Q Just to clarify, your understanding is that  
9 written consent is only required where such written  
10 consent is possible?

11 A Yeah. And we were working with HC for  
12 months on a trust basis as well. We were presenting  
13 budgets, and more recently the presentation of a  
14 budget fell on -- we received no response. And that's  
15 not in the spirit of this agreement to, to reimburse  
16 us for the reasonable costs of the wind down.

17 Q Where would written consent not be possible?  
18 When would written consent not be possible?

19 A Well, it's probably possible, but I'll give  
20 an example. If I go and send 15 tax returns to the  
21 states and I expense the postage and it's \$50, that's  
22 something that the CEO of HC wants to have presented

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1 to him for signature? I just -- there's a practical  
2 manner of working through handling these expenses,  
3 which in each individual one may not be much, but in  
4 aggregate they do add up.

5 And I would say in presenting a budget,  
6 that's notice we'd like your consent, and we have  
7 lived within the budgets.

8 Q And if you did not receive consent?

9 A If it was time sensitive. If it wasn't time  
10 sensitive, you know, I think one course of action  
11 would be to say when are you going to consent. We've  
12 asked for this repeatedly. And at some point in time  
13 you can interpret that as consent or no consent,  
14 absolutely not. But some of these items are  
15 reasonable. They're all reasonable.

16 Q Did HC Salon ever provide written consent  
17 for any of the six or so budgets that were sent to it?

18 A I'm not aware. I'm not aware of any.

19 Q Did HC Salon provide written consent for the  
20 payment of payroll for the wind down staff?

21 A They knew it was ongoing. I don't know what  
22 to say about it other than that. There may be some

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1 email that I haven't seen, but -- no.

2 Q Did HC Salon provide written consent for the  
3 payment of the issuance of W-2s, 1099s, other tax  
4 filings?

5 A Not in writing that I know of, but I was  
6 involved in discussions around that.

7 Q Did HC Salon provide other non-written  
8 consent?

9 A The non-written consent was more or less  
10 ongoing. I don't think there was, there was a  
11 tremendous amount of friction in any of this until  
12 more recently.

13 Q Can you describe some of the ongoing  
14 non-written consent?

15 A We were, we were doing our job and counsel  
16 was speaking with HC's counsel and we understood what  
17 we were up to, and I never heard a word that any of  
18 this was, we were being told we shouldn't do it or  
19 couldn't do it or needed to adjust, because if we ever  
20 did feel the need to adjust or were told to adjust  
21 something, we looked at it.

22 You know, for instance, just the management

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1 of the payroll, we're not keeping people on that are  
2 no longer needed just to charge, charge HC. We're  
3 limiting the hours, we're limiting the people that are  
4 in that budget.

5 Q Did HC Salon ever provide written consent  
6 for the payment of Epiq, the noticing and claims  
7 agent?

8 A Not that I'm aware of. Other than they did  
9 recommend Epiq to begin with to us.

10 Q Is it your understanding that that  
11 recommendation is sufficient to require reimbursement?

12 A Whether it's sufficient, I don't know, but  
13 it's certainly an endorsement of here's who we want  
14 you to use and we're okay with it.

15 Q Is HC Salon required to pay for any advisor  
16 that they endorsed?

17 A Is HC Salon required to pay -- I would say  
18 if it's a reasonable cost of the wind down, then yes.

19 Q Did HC Salon provide written consent for the  
20 payments of U.S. Trustee fees?

21 A In a way, yes, because they continued to use  
22 our bank accounts which generated those fees.



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1 Q Can we look to Section 5.3, which is before  
2 you on Page 6 of the Transition --

3 A Trustee fees, yes.

4 Q Can you let me know when you're finished  
5 reading that sentence?

6 A I've read it.

7 Q Is it your understanding that the payment of  
8 Trustee fees is limited in any way?

9 A Reasonably incurred as a result of -- direct  
10 result of sellers providing services under this  
11 agreement.

12 Q Once the TSA was terminated on September 4,  
13 2020, would there be any reason HC Salon should pay  
14 for U.S. Trustee fees under continued --

15 A Continued --

16 MR. SHER: Objection.

17 Excuse me, Mr. Mardiks, I'm noting an  
18 objection. You can answer.

19 A Well, based on continued use of the Debtors'  
20 bank account.

21 Q Do you know when HC Salon's use of the  
22 Debtors' bank accounts ended?

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1 A Still ongoing.

2 Q In what way is HC Salon using the Debtors'  
3 bank accounts?

4 A Well, I just heard that this morning so I  
5 think perhaps it's a small usage, but it still  
6 continues. That's what I was told.

7 Q Can you describe what you were told without  
8 communication --

9 A Maybe it would --

10 (Simultaneous speaking.)

11 A Maybe it would be easier to ask Mr. Jacobson  
12 who sees the transactions.

13 Q Can you identify with whom you had  
14 discussions regarding payment of the payroll,  
15 representatives of HC Salon that were not Mr. Horvath?

16 A I didn't have conversation with HC about the  
17 payroll. All my dealing with our staff was between  
18 myself and Mr. Sher and Mr. Jacobson.

19 MS. WILLIS: Can we go Exhibit S, the wind  
20 down budget, which would be Exhibit 19.

21 AV TECHNICIAN: Yes, ma'am. One second,  
22 please.

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1 (Exhibit 19 was marked for identification  
2 and is attached to the transcript.)

3 AV TECHNICIAN: And for the record this is  
4 Exhibit 19.

5 And you have access now.

6 Q Do you recognize the document?

7 A I do. It's the wind down budget.

8 Q When was this prepared?

9 A This week.

10 Q Who prepared it?

11 A Primarily Mr. Jacobson, with input.

12 Q With input from who?

13 A From me and from Mr. Sher.

14 Q For what purpose was it prepared?

15 A To -- to -- well, to reconcile where we are  
16 as of this point in time and what we are both likely  
17 to see, or possibly see going forward.

18 Q Are there prior versions of this document?

19 A Yep, there are prior versions.

20 Q Did you have any involvement in the  
21 preparation of those prior versions?

22 A Pretty much the same as I just described for

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1 this one. These were prepared with dialogue between  
2 the three of us.

3 Q Do you know when this was provided to HC  
4 Salon?

5 A I believe yesterday.

6 Q In providing this budget to HC Salon were  
7 you seeking approval of the amounts listed in the  
8 budget?

9 A Well, at this stage we were seeking to  
10 discuss it here and introduce it as part of the  
11 motion. But we would love to have approval of it.  
12 It's the way we've been running the wind down, and it  
13 looks like the way it would continue. If there's  
14 discussion, we've yet to have it.

15 Q Are there documents that support the amounts  
16 listed in this wind down budget that you know of?

17 A That I know of? I'm pretty certain that  
18 there would be documents around most all, if not all,  
19 of this, except maybe the administrative, copier,  
20 phone, et cetera, that's not a contract. But most of  
21 these -- a lot of these are contractual and there is  
22 some documentation.

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1 Q Do you know if those documents have been  
2 provided to HC Salon or a representative of HC Salon?

3 A I'd have go through them one at a time.  
4 Some of them, yes, and some of them, no.

5 Q The first line item of this budget says wind  
6 down staff. Do you know who is included in wind down  
7 staff?

8 A I am. Latarice McKinney has been handling  
9 some of the HR functions. She had, at one point in  
10 time, a woman who was dealing with benefits, and we  
11 were working with an IT consultant. And those latter  
12 two are no longer part of the staff. It's, it's  
13 Latarice and myself and someone who's handling  
14 accounting/bookkeeping who continue on at this point  
15 in time, and that will be further reduced going  
16 forward as soon as we can. Those are the individuals.

17 Q That's about five individuals, correct?

18 A All told. But at this point in time we  
19 have -- one, two, three -- we're down to three, and  
20 we'll soon be down to two, two I think.

21 Q And over the course of time the amount for  
22 wind down staff has changed. For example, it's

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1 \$27,325 in August. In September that amount goes up  
2 to \$104,546. Can you let me know why that amount has  
3 changed?

4 A Because some of the people who are now part  
5 of our staff are working for HC, and then they helped  
6 us. And when they quit working for HC, they had to be  
7 paid.

8 Q Do you know how many people were paid under  
9 Wind Down Staff, or are to be paid under Wind Down  
10 Staff for the month of September?

11 A It shows here. The only thing I know is  
12 what's on this report.

13 Q Does it show the amount of people for wind  
14 down?

15 A Oh, the amount of people? I think there's  
16 some detail that I don't see in front of me. But all  
17 of these budgets were provide -- there are pages of  
18 detail down to that level.

19 Q You mentioned that now only three people are  
20 included in the wind down staff.

21 A Yeah.

22 Q Going forward, it looks like between March

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1 and April there's a decrease in the amount for the  
2 wind down staff. Do you know how many people are  
3 included in the April wind down staff budget?

4 A That might -- that's probably -- it's  
5 probably more than I said just a moment ago. That  
6 looks like three people. It may be a partial  
7 reduction of one. I'm not sure what's in that number.

8 Q Do you know how many are included in May?

9 MR. SHER: I'm going to also object to this  
10 line of questioning. I'm not sure this was within  
11 what he was designated for, but -- I mean I'm not  
12 going to stand on ceremony here because of the, sort  
13 of the crossover between designations, but it's not  
14 altogether clear that this is the right person to be  
15 asking these questions. So for that reason I'll  
16 object, but continue on.

17 A I mean, I can't say who's in May, I would be  
18 speculating about it, but there is, there is detail.  
19 And when you speak with Mr. Jacobson I'm sure he has  
20 that.

21 And we did discuss reducing staff and at  
22 least reducing time, so it could be a combination of

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1 those two things. And that's in line with the wind  
2 down. As needs become fewer and fewer and ultimately  
3 none, the staffing winds down, too.

4 Q And do you know what services are provided  
5 to achieve the wind down of the companies aside from  
6 benefits, IT consulting and accounting?

7 A Correspondence, dealing with whoever needs  
8 us for whatever reason, responding to it; dealing with  
9 contractors, vendors, signing documents, preparing  
10 budgets, doing the accounting, dealing with the bank,  
11 making sure that we pay, pay items that are our  
12 responsibility to pay. Various -- it's all  
13 administrative at this point. Dealing with the  
14 bankruptcy.

15 Q Do you have an idea of how much longer the  
16 wind down will take?

17 A Well, we anticipated it could be done before  
18 the end of March. But if it, if it lags, delays for  
19 whatever reason, you see these additional months in  
20 here.

21 Q Are you aware of any reasons for which it  
22 might lag or delay?



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1           A     No. It would be pure speculation. There's  
2 nothing looming that's making me think that.

3           Q     Do you know if any earlier versions of the  
4 wind down budget were provided to HC Salon, this wind  
5 down budget provided to HC Salon --

6           A     This particular one --

7           Q     Yes.

8           A     -- that we're looking at?

9                     This was not prepared more than two days  
10 ago, so I don't think so. I think there were earlier  
11 versions of this that were provided, but not of the  
12 same, not of the same document I'm looking at on the  
13 screen.

14          Q     Were any versions of the wind down budget  
15 prepared before the TSA was terminated on September 4,  
16 2020?

17          A     Don't -- I'm not sure, but I believe so. I  
18 believe we were doing those then.

19          Q     Are you aware of any versions of the wind  
20 down budget that were prepared and sent to HC Salon  
21 before July 14, 2020?

22          A     I'm not aware of any, but -- I'm not aware

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1 of any. We were contemplating the wind down at that  
2 point in time.

3 Q Is your position that even if the wind down  
4 were to lag HC Salon would be responsible for the  
5 payment of all amounts through the end of June or  
6 beyond?

7 A Only if they were reasonable, including any  
8 delay. If we were causing the delay, I would say  
9 that's not reasonable.

10 Q Is it your position -- is it the Debtors'  
11 position that only the Debtors causing a delay would  
12 be unreasonable?

13 A Only the Debtors causing a delay? Well,  
14 certainly if, if HC were causing the delay, they  
15 should pay for it. I just -- it's -- that would be  
16 unreasonable or -- I'm sorry, those would be  
17 reasonable costs in that case. And other, other  
18 factors could determine it. If one of these  
19 contractors is no longer able to perform, then we have  
20 to bring in somebody else that has to get up-to-speed,  
21 that could cause a delay, and that's really nobody's  
22 fault and it's perfectly reasonable.

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1 But it's a matter of situation and  
2 circumstance in determining what is not reasonable.  
3 We would like to wrap this up. That's our job.

4 Q How do the Debtors intend to bring their  
5 bankruptcy cases to a close?

6 A Well, hopefully not catastrophically. I  
7 don't know how to answer that question.

8 Q Have the Debtors prepared a Plan of  
9 Reorganization or a Plan of Liquidation to file in the  
10 bankruptcy cases?

11 A Not that I'm aware of.

12 Q Do you know why the Debtors haven't prepared  
13 or filed a Plan of Reorganization or a Plan of  
14 Liquidation in the bankruptcy cases?

15 A Well, that's something that counsel would  
16 advise me on at the time, and we would address it  
17 then. And I'm sure it's forthcoming. It's part of  
18 the process. It's just nothing we've worked on  
19 together yet.

20 Q Do you know why the Debtors haven't  
21 converted the cases to cases under Chapter 7?

22 MR. SHER: Objection.

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1           A       Yeah, I don't know.

2           MS. WILLIS: So we've been going on for  
3 about two hours. Do you think now, Mr. Sher, is a  
4 good time to take, say a five-minute break?

5           MR. SHER: It's your deposition. You run  
6 the show. I'll do what you say.

7           MS. WILLIS: Okay. Yeah, I think we should  
8 take just a few minutes' bathroom break now.

9           MR. SHER: We don't have to say what it's  
10 for, we could just say we're taking a break.

11          MS. WILLIS: -- water break, a break and go  
12 off the record, and you and I can -- I may have just a  
13 few more questions --

14          MR. SHER: Okay.

15          MS. WILLIS: -- for the witness, but I don't  
16 think it will take too long.

17          MR. SHER: All right. Thank you.

18          (A discussion was held off the record.)

19          (A recess was taken at 11:27 a.m.)

20          (Back on the record at 11:41 a.m.)

21          MS. WILLIS: Can we pull up Exhibit H, which  
22 will be marked as --

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1 AV TECHNICIAN: No. 20.

2 MS. WILLIS: -- Exhibit 20.

3 AV TECHNICIAN: Yes, ma'am. One second.

4 You said H, right?

5 MS. WILLIS: Correct, the Wind Down Systems  
6 email.

7 AV TECHNICIAN: There you go. Perfect.  
8 Just double-checking.

9 MR. SHER: Wind Down Systems email.

10 AV TECHNICIAN: Exhibit 20 for the record.

11 (Exhibit 20 was marked for identification  
12 and is attached to the transcript.)

13 MS. WILLIS: Can we give control to the  
14 witness, please.

15 AV TECHNICIAN: Ah, yes. I'm sorry, yeah.  
16 One second.

17 (A discussion was held off the record.)

18 AV TECHNICIAN: He has access now.

19 Q Can you scroll down to the next page so that  
20 you can see the initial email sent on August 31st.

21 A Okay. This is, yeah, to me from Brad  
22 Hansen.

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1 Q Do you recognize this document?

2 A Yeah, I think I saw it during the last week  
3 of reviewing emails, I think it was in that group.

4 Q Do you recall the call that you had with  
5 Brad Hansen?

6 A We had several regarding needs going  
7 forward. This particular one, I mean I can't say with  
8 that -- specificity that I remember this particular  
9 call, but we did talk, I know that.

10 Q And it mentions here in the first bullet  
11 point, HC Salon Holdings will no longer have a need,  
12 and no longer be using, the Lawson/Infor and Velocity  
13 systems.

14 A Right, I remember that part of the  
15 conversation. And Lawson was the repository for a lot  
16 of documents. And Velocity was the hosting component.  
17 We had servers in a couple of locations.

18 Q And after August 31st, 2020, what were  
19 Lawson/Infor and Velocity systems used for?

20 A For records and email. And Velocity was the  
21 host, had the servers. And the information that was  
22 stored in there was important to transition and the

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1 wind down, some of the information anyway. So that  
2 was the nature of our discussion; I need access to  
3 these systems to do our job.

4 Q Can you clarify that for me? Who were they  
5 important for? Were they important for the Debtors,  
6 were they important for HC Salon Holdings, were they  
7 important for both parties?

8 A Possibly both. I can say certainly to the  
9 Debtors, yeah.

10 Q Do you know if HC Salon Holdings used the  
11 Lawson/Infor, Velocity systems following August 31st?

12 A I don't know. I have no way of knowing  
13 that.

14 Q Have the Debtors rejected the Velocity  
15 agreement or the Lawson agreement?

16 A At this point? I should -- I'd have to get  
17 back to you on that.

18 Q Do the Debtors still have a need for the  
19 Lawson agreement or the Velocity agreement?

20 A No.

21 Q Does HC Salon benefit in any way from -- at  
22 this current moment from the Lawson agreement or the

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1 Velocity agreement?

2 A I couldn't say what HC benefits from at this  
3 point. I don't know.

4 Q Do you believe that HC Salon benefited after  
5 August 31st from the Lawson agreement or the Velocity  
6 agreement?

7 A As I say, I don't have information to answer  
8 that.

9 Q I'm sorry, could you say that again? I  
10 couldn't hear you.

11 A I said I would need more information to  
12 answer that. I'm sorry, I can't say if they -- you  
13 know, if they benefited after August 31st.

14 Q At the very top of this email there is a  
15 response from Mr. Sher. In his last sentence it says,  
16 "We will however work to resolve these issues  
17 quickly." Do you know if the issues he refers to have  
18 been resolved as of the date here?

19 A As of today? Let me just -- please let me  
20 read the comments.

21 Q Yes. Please, take your time.

22 A Okay, so the question was? I'm sorry, Ms.



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1 Willis, the question was?

2 Q The question was whether or not these  
3 issues, as it's referred to in that last sentence,  
4 have been resolved, the issues with respect to the  
5 Velocity --

6 A Yeah, at this point in time I think this --  
7 for records information, we've come up with  
8 alternative means of accessing information so I would  
9 say it's resolved.

10 Q Okay. We spoke earlier about a series of  
11 budgets that were sent from the Debtors to HC Salon.  
12 We spoke earlier about consent from HC Salon. Is it  
13 the Debtors' position that the parties developed a  
14 course of conduct with respect to consent for certain  
15 costs and reimbursement of those fees and expenses?

16 A To a degree, yes.

17 Q Could you explain what you mean by to a  
18 degree, yes?

19 A Well, I mean, there was a course of conduct,  
20 and we were -- we were working together fairly well  
21 with a pretty good understanding about things.  
22 Sometimes not immediately, but things that needed to

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1 be paid for by HC were paid for ultimately. And then  
2 it got to where there was no response, no response, no  
3 action, no payment.

4 Q And could you, for my benefit, describe the  
5 course of conduct a bit better? A budget was sent and  
6 HC Salon simply paid? What exactly was the course of  
7 conduct?

8 A Yeah, for starters nobody ever said to us,  
9 you know, we're not paying you, you didn't get it from  
10 us in writing. It's -- those things were paid. And,  
11 and there were -- there was dialogue between Mr. Sher  
12 and, and HC's counsel that I -- maybe there were other  
13 channels, but that's the one I'm aware of -- where  
14 things would be presented and worked out.

15 Q When you say worked out, what do you mean?

16 A If there was any questioning of what -- of  
17 what we were asking, showing them or asking for  
18 reimbursement of or planned to do.

19 Q And is it your understanding that HC Salon  
20 never sent written consent for the payment of wind  
21 down or transition --

22 A That, I don't -- I didn't say that. I don't

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1 see everything, so it's quite possible there exists  
2 some of those circumstances where it was put in, in  
3 some form of writing. It could have been an email,  
4 but I don't know.

5 Q If I were to categorize expenses in  
6 transition services which would be included in the  
7 schedule of the TSA or wind down costs, which may not  
8 be included in the schedule of that TSA, would you  
9 understand what I was referring to if I categorized  
10 things in that way?

11 A Well, you're not talking about this wind  
12 down budget, you're talking about some other document?

13 Q I'm talking about the Schedule of Services  
14 that's attached to the TSA.

15 A Oh, yeah.

16 Q If I were to call those transition services  
17 and if I were to call everything else wind down  
18 expenses --

19 A Yeah, that's, that's one way to do it.  
20 Unfortunately, there's a little bit of fuzziness  
21 between transition and wind down, but for the most  
22 part that's how I would look at it.

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1 Q Could you let me know what you mean by  
2 there's a bit of fuzziness? What's that fuzziness?

3 A It's just some things that -- if it was for  
4 the benefit -- the way I would look at is if it was  
5 for the benefit of HC, it's transition. If it's not  
6 for the benefit of HC but needs to be done, that would  
7 go into wind down.

8 Q If it's not for the benefit of HC but needs  
9 to be done --

10 A To wind down the companies, that would be  
11 the wind down. That would be the distinction that I  
12 would -- that's how I would -- if I had to put  
13 everything in A bucket or B bucket, that's how I would  
14 do it.

15 Q Okay. So if we say that anything for the  
16 benefit of HC is in transition services, and if I -- I  
17 want to then ask, has HC Salon paid for all transition  
18 services, anything that was to their benefit?

19 A If I answered that no, you'd -- I don't  
20 know. I'd have to confer with Rodger to see what  
21 might be left over. But I think that most of the  
22 transition services we've been compensated because

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1 they occurred months ago.

2 Q And has HC Salon paid for, to your knowledge  
3 paid for any of the wind down services or wind down  
4 expenses?

5 A To my knowledge, no.

6 MS. WILLIS: Those are all the questions  
7 that I have for the witness.

8 MR. SHER: Thank you.

9 Why don't we leave up -- I wasn't  
10 necessarily -- I'm going to start tracking your  
11 Exhibit numbers, but I would like you to leave up  
12 on -- we're going to ask questions about the  
13 Transition Services Agreement. And I think you also  
14 had up there the Sale Order with the APA in it, right?

15 MS. WILLIS: Yes, Exhibit 15 and 17.

16 MR. SHER: Okay. And then that's sort of it  
17 for now. You can put the rest of them down.

18 AV TECHNICIAN: So we have Exhibit 15 here,  
19 and then let me know when you need to go through 17.

20 MR. SHER: Yes. So Exhibit 16 and 17, and  
21 18, I'm going to ask questions about that.

22 AV TECHNICIAN: Okay.

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1 MR. SHER: And actually 19 now while we're  
2 at it. So you might as well leave them all up.  
3 Ms. D'Alessandro is wonderful. She just sent me the  
4 list of your Exhibits so I can follow it now.

5 EXAMINATION BY COUNSEL FOR THE DEBTORS  
6 BY MR. SHER:

7 Q Why don't we first turn our attention to  
8 Exhibit 16, Section 2.5 of the APA that's attached.  
9 And for the life of me --

10 MR. SHER: You have to give me control. We  
11 have to go to the Asset Purchase Agreement that's  
12 attached. I don't have the page numbers.

13 Q So, Mr. Mardiks, if you'll go to the Asset  
14 Purchase Agreement.

15 AV TECHNICIAN: Sorry, this is the host.  
16 I'm trying to find the page.

17 THE WITNESS: I was trying to move it.

18 MR. SHER: It's way down, it's way down.

19 There we go. Little further. Go down,  
20 please, to Section 2.5, please.

21 They're very long documents, I apologize.

22 AV TECHNICIAN: Okay, we're getting there.

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1 2.5. And let me give him access.

2 Okay, sir, you have access now.

3 Q Okay, Mr. Mardiks, earlier today when Ms.  
4 Willis was questioning you she asked you whether or  
5 not you believed that the Transition Services  
6 Agreement was a deliverable under the APA. I want  
7 you -- I think you were looking at Section 2(a), and I  
8 want you to look at Section 2.5(a). Take a look at  
9 Section 2.5(b), if you will, and please read that.

10 A Sure. (b), at the closing the applicable  
11 buyer will deliver to the applicable seller the bill  
12 of sale -- it's 1, the bill of sale duly executed by  
13 such applicable buyer; 2, the assignment and  
14 assumption agreement duly executed by such applicable  
15 buyer, and 3, the Transition Services Agreement, and  
16 4, duly executed certificate from an officer of such  
17 applicable buyer to the effect that each of the  
18 conditions specified in 7.2(a) and 7.2(b) are  
19 satisfied.

20 Q Does that refresh your recollection as to  
21 whether or not the Transition Services Agreement was a  
22 deliverable at closing?

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1 A Yeah, it was contemplated, and here it is.

2 Q Okay. And to the best of your knowledge,  
3 was an asset -- was a Transition Service Agreement  
4 signed on or about the closing of the transaction?

5 A Yeah, June 4th, I believe.

6 Q Okay. I want to -- I want to now put up on  
7 the screen what we're going to mark as Exhibit 21  
8 which is --

9 MR. SHER: And I think we uploaded it,  
10 Mr. Sharp, to you just a few moments ago.

11 AV TECHNICIAN: Yes, sir. What document  
12 number are you --

13 MR. SHER: 21.

14 AV TECHNICIAN: So your document is Document  
15 21 and by coincidence is going to be also Exhibit 21.

16 MR. SHER: That is pure coincidence.

17 (Exhibit 21 was marked for identification  
18 and is attached to the transcript.)

19 AV TECHNICIAN: For the record, Exhibit 21  
20 is on the screen.

21 Q All right. Now, for the record, Exhibit 21  
22 is the motion filed with the Bankruptcy Court, Docket



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1 22 --

2 MR. SHER: I need to see the top of the  
3 screen, please.

4 Q -- Docket 22 filed April 23rd, 2020, the  
5 petition date. And this is -- without reading the  
6 whole thing into the record, this is the motion  
7 pursuant to which the Debtors sought to sell the  
8 assets -- its assets to HC Salon or a higher or better  
9 bidder. Attached to this motion, I believe, should be  
10 a copy of the original Asset Purchase Agreement.

11 MR. SHER: And I don't know,  
12 Ms. D'Allesandro, do we attach -- do we have the  
13 attached -- is that a different Exhibit? Would that  
14 have been 22-1?

15 MS. D'ALESSANDRO: Yes, it's part of the  
16 document.

17 MR. SHER: Can we go see if that's attached  
18 here, please? I don't think it's attached.

19 MS. D'ALESSANDRO: It is.

20 MR. SHER: It is.

21 Okay, keep going then.

22 Q Mr. Mardiks, if you have control, why don't

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1 you scroll down. I apologize. Let's look for the  
2 Exhibit which is the Asset Purchase Agreement.

3 Sometimes I get lost in these virtual  
4 depositions, I'm sorry.

5 A (Reviewing.)

6 Q Keep going.

7 A It's way down there. It's going slowly.

8 Q It's down a ways.

9 A I think this might be it.

10 Yes. Okay.

11 Q I want you to turn your attention to  
12 Schedule B, all the way at the back.

13 Okay. Schedule B, I'm going to have to  
14 shortcut it. If you take -- for purposes of this  
15 question we can go back up into the documents, but  
16 this is -- Schedule B was the other excluded assets.  
17 And if you want, we can go back up to the definition  
18 of excluded assets. And you see that one of the  
19 assets that's excluded from the purchased assets is  
20 the claims against Visa and MasterCard. You remember  
21 you testified about that earlier?

22 A Yes, I do.

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1 Q Do you know why the parties agreed to  
2 exclude that from the assets that were being sold to  
3 HC?

4 A I think it was because it was not an  
5 encumbered asset by M&T Bank, and the assets that were  
6 encumbered by M&T Bank were part of the buyout of  
7 debt.

8 Q To the best of your recollection HC bought  
9 the loan documents and the security agreements of M&T  
10 Bank?

11 A Yes.

12 Q So they were a successor in interest to the  
13 liens of M&T Bank?

14 A Correct.

15 Q And if M&T didn't have a lien on it, they  
16 didn't have a lien on it, and therefore the Debtor was  
17 not selling it to them, correct; is that your  
18 testimony?

19 A That's correct.

20 Q And that was in the original APA?

21 A It was in the original APA -- I --

22 Q You'll see this is dated --

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1 (Simultaneous speaking.)

2 Q Let me back you up. This is the Asset  
3 Purchase Agreement filed with the Court on the  
4 petition date.

5 A This is original. Then, yes, it was in  
6 here.

7 Q And when Ms. Willis showed you the Sale  
8 Order APA, this same provision was carried over into  
9 that agreement, correct?

10 A It remained, yes.

11 Q Okay.

12 MR. SHER: You can take that down.

13 Q Do you recall in the negotiations leading up  
14 to the execution of the Sale Order and the TSA working  
15 with a law firm by the name of Littler?

16 A Yes.

17 Q Were you involved in conversations and  
18 negotiations with the Debtors and Littler in the runup  
19 to the sale hearing and the execution of the TSA?

20 A I was.

21 Q And do you know what services were provided  
22 by Littler in contemplation of the TSA and the Sale

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1 Order?

2 A Littler is a nationwide labor firm, and we  
3 engaged them to help us around the transitioning of  
4 the employees, whether they would be furloughed or  
5 kept, and anything related to them. And they raised  
6 the issue of WARN Act notices, W-A-R-N, helped us to  
7 comply.

8 Q Prior to March of 2020 approximately how  
9 many employees did the Debtors have?

10 A Before March of 2020? It was in the range  
11 of 10,000 plus, maybe 11.

12 Q And of those 10,000, do you know  
13 approximately how many were offered employment by HC?

14 A This is an approximation, Mr. Sher, but it  
15 was probably in the neighborhood of five to 6,000.

16 Q So is it your understanding that three to  
17 4,000 employees were never rehired?

18 A Were never rehired because they were in  
19 salons that didn't reopen, yeah.

20 Q And as part of the Sale Order and the TSA  
21 the Debtor was required to work with HC to try to, try  
22 to make sure that there were no WARN Act violations?

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1 A Right.

2 Q And you were involved in those negotiations,  
3 correct?

4 A Yes, I was.

5 Q Thank you.

6 Next, I want to take a look at the --  
7 Exhibit 17, the TSA.

8 AV TECHNICIAN: One second, please.

9 (Document displayed.)

10 MR. SHER: Good.

11 Oh, I'm sorry. I'm talking about Exhibit --  
12 you can leave it up -- Exhibit 18, which is the  
13 termination letter.

14 AV TECHNICIAN: Okay, 18.

15 Q Ms. Willis asked you questions about this  
16 letter, and you, I believe, said you have seen it  
17 before and were familiar with it, correct?

18 A Yes, I did.

19 Q Under this letter it says that they want CHI  
20 to continue performance under five contracts. Do you  
21 see those five?

22 A I do.

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1 Q Do you recall approximately when -- well, do  
2 you recall if the Debtors were ever requested by HC to  
3 terminate or reject those contracts?

4 A Not until in September.

5 Q And do you recall approximately when the  
6 motion to reject those contracts was filed?

7 A I believe it was September 8.

8 Q Okay. You also testified that  
9 terminating -- this was a termination, but that's not  
10 the way things played out, I think was your testimony.

11 A I think that's correct.

12 Q Is it your understanding that after July,  
13 let's say July and August HC still maintained use of  
14 the Debtors' bank accounts?

15 A Absolutely.

16 MR. SHER: We want to mark as Exhibit 22, I  
17 think --

18 AV TECHNICIAN: Yes, sir.

19 MR. SHER: -- what I sent to you yesterday,  
20 which was Exhibit 12 in my list.

21 (Exhibit 22 was marked for identification  
22 and is attached to the transcript.)

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1 AV TECHNICIAN: One second, please.

2 Exhibit 22.

3 And, sir, you have access now.

4 Q Exhibit 22, for the record, is the Debtor In  
5 Possession Amended Monthly Operating Statement for the  
6 period ending August 31, 2020. Can you go to the  
7 actual statement, sir?

8 Stop right there. Go to Page 1. Is that  
9 your -- you reviewed and signed this?

10 A That's my signature.

11 Q I want you to go to the back and look at  
12 some of the bank statements attached.

13 Wait, stop there for a second.

14 How much in disbursements went through the  
15 Debtors' bank accounts just in August from, quote,  
16 operations?

17 A Okay, let me look on this form and see where  
18 that is.

19 MR. SHER: If I may shortcut it, everyone,  
20 it's No. 3 is disbursements.

21 A Okay, there it is. \$793,010.05.

22 Q Go to the back and look at the bank



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1 statements, if you will. It's -- they're all the way  
2 in the back.

3 A I know. I can't get it to move right now.

4 Q Oh, I'm sorry.

5 A Sorry, it's just sitting there.

6 Q Yeah, well --

7 You stuck?

8 A It fits and starts. Bear with me. Maybe I  
9 can get it to where we need it.

10 Q Go back up. I want to look at the  
11 disbursements for a second.

12 The next page, please.

13 AV TECHNICIAN: Let me help you here.

14 MR. SHER: Yeah. Let's go page by page.

15 I'll tell you when to stop, Mr. Sharp.

16 AV TECHNICIAN: What page of your PDF file  
17 is?

18 MR. SHER: Hold on, please.

19 AV TECHNICIAN: That way is easier.

20 MR. SHER: No, that's great.

21 AV TECHNICIAN: You don't have that?

22 No worries. What page of the document?

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1 MR. SHER: Why don't we go to Page 8 of 58,  
2 which is up on the top of the -- so two pages down.

3 AV TECHNICIAN: Okay, he's there now.

4 Q I'm not going to go through every page, Mr.  
5 Mardiks, but this is, this is the cash receipt detail;  
6 is that correct?

7 A This is the bank statement?

8 Q Yes -- no, this is a report. This isn't a  
9 bank statement, this is Mr -- this is a cash receipt  
10 detail statement.

11 A Okay.

12 Q And do you see that there are deposits  
13 almost every day from HC Salon?

14 A HC Salon Holdings, Inc., yes.

15 Q And do you see a funding request deposit on  
16 8/5 for \$438,000?

17 A 8/5 -- yes -- you said 838,000 or 4 --

18 Q No, 438,000.

19 A Yeah, 438.

20 Q Okay. And so is it your understanding that  
21 this was from the operations of HC -- of the salons  
22 that HC acquired and not anything the Debtor itself

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1 was doing?

2 A Yes, that, that would be correct based on  
3 the date.

4 Q All right. And -- thank you.

5 And is it your understanding that the U.S.  
6 Trustee fees are based on disbursements that are made  
7 by a Debtor?

8 A Yes, that's how it was explained to me.

9 Q All right. Let's now turn your attention  
10 to -- and I think we testified a moment ago that  
11 disbursements were approximately how much, 793? Was  
12 that your --

13 A 793 and change.

14 Q If you go to the next page, which is 10 of  
15 58. I think Mr. Sharp will take you to the next page.

16 AV TECHNICIAN: Page No. 9.

17 MR. SHER: Yes, sir -- or 10, go to 10.

18 AV TECHNICIAN: Okay.

19 Q And this is -- you see that these are  
20 disbursements being made throughout August?

21 A Yes.

22 Q And were these disbursements made for the

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1 benefit, or by -- as a result of HC running the  
2 businesses and using the Debtors' bank accounts?

3 A Yes.

4 Q And this was after the July 17 supposed  
5 termination date in Mr. Gittlitz's letter which was  
6 marked as Exhibit 18?

7 A Yes, it was the middle to late August, yes.

8 MR. SHER: You can take that down.

9 Let's go to the TSA for a second. And that  
10 is Exhibit 17, please. Put that on the screen, and  
11 let's go to Section 5.

12 AV TECHNICIAN: One second, please.

13 (Document displayed.)

14 AV TECHNICIAN: Exhibit 17.

15 MR. SHER: 5.

16 AV TECHNICIAN: No. 5.

17 MR. SHER: Let's have the whole page. Okay.

18 Q Now, Mr. Mardiks, look at Section 5.3.

19 A 5.3, Trustee Fees.

20 Q To the best of your knowledge, has HC paid  
21 the Debtor for the U.S. Trustee fees incurred as a  
22 result of those disbursements, for instance, in

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1 August?

2 A To the best of my knowledge, no.

3 Q Okay. Section 5.1. You can read it. You  
4 don't have to read it into the record, just read it.

5 A Okay, I'm familiar with it.

6 Q Okay. To the best of your knowledge, has HC  
7 paid \$25,000 per month on the first day of June, July,  
8 August, or September 2008 [sic]?

9 A No with certainty they haven't.

10 Q And is it the Debtors' position that even --  
11 that HC is obligated under the TSA to pay four monthly  
12 payments of \$25,000?

13 A Based on the usage of our services, yes.

14 Q And is it the Debtors' position that under  
15 the TSA they're obligated to pay all U.S. Trustee fees  
16 that arise because they used our bank accounts?

17 A Yeah, that's clear to me.

18 Q Now, a little while ago Ms. Willis asked you  
19 about Epiq. Do you know who Epiq is?

20 A Yes, I do.

21 Q Do you recall who at the Debtor [sic] put us  
22 in touch with Epiq and told us to use them?

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1 A Yes, I recall it's Mr. Chesley.

2 Q Okay. And Epiq, do you know what Epiq does?

3 A They, they provide notice to a myriad of  
4 people involved in the bankruptcy.

5 Q And as a result of the sale, did the Debtor  
6 have to send out thousands of notices to its  
7 creditors?

8 A Yeah, many, many. We have -- no, never  
9 mind, go on.

10 Q You also recall that under the APA, the  
11 Debtor, or excuse me, HC funded \$500,000 to pay,  
12 quote, stub rent for rejected leases?

13 A Yes.

14 Q And did Epiq have to send out notices --  
15 (Simultaneous speaking.)

16 A -- bank account.

17 Q And did Epiq have to send out notices for  
18 that?

19 A Yes.

20 Q And do you recall if, if the Debtor actually  
21 ultimately paid that \$500,000 in claims?

22 A I believe we had, we had to run it through

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1 our bank account. We did pay it.

2 Q And do you recall if that was in September,  
3 August? Do you know when we paid it?

4 A I believe September.

5 Q Okay. I want to talk for a moment about --  
6 I was confused and I want to see if I can clarify some  
7 confusion here.

8 Section 5.2, there was this discussion about  
9 invoices and budgets, and I want to see if we can  
10 parse through what you intended by invoices and  
11 budgets, okay?

12 Do you recall if the Debtor sent HC, quote,  
13 budgets for the wind down?

14 A I believe budgets were sent and discussed --

15 Q Okay.

16 A -- with HC.

17 Q And when you talk about those budgets, are  
18 invoices that are referred to in 5.2 different in your  
19 mind-set than the budgets for the wind down?

20 A I would say yes. A budget is different than  
21 an invoice, but it can serve as the same after the  
22 fact.

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1 Q Yes. But during the course of the TSA --  
2 and we'll leave open when exactly it terminated -- I  
3 mean -- let me take a step back. You said that under  
4 the terms of the TSA it was to terminate on  
5 September 4th, correct?

6 A Yes.

7 Q But is it our -- the Debtors' position that  
8 even though it was supposed to terminate on  
9 September 4th, the Debtor kept providing services  
10 throughout September of 2020?

11 A That's correct.

12 Q And most of those services were in  
13 allowing, allowing them to continue using our bank  
14 accounts?

15 A Yes, correct.

16 Q Okay. Now, do you recall whether or not  
17 from time to time HC would fund money to the Debtors  
18 to help pay for the costs and expenses of running the  
19 business in the, quote, transition period?

20 A During the transition, yeah, they were -- I  
21 believe they were funding costs of running the  
22 business.



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1 Q Did they require every single time an  
2 invoice to be provided to them, or was it just a  
3 course of dealing between the parties?

4 A It was a course of dealing. I don't recall  
5 one time when they requested an invoice.

6 MR. SHER: I want to show you what we sent  
7 to, Mr. Sharp, you yesterday, which is our Exhibit --  
8 no, no, let me take a step back for a moment -- their  
9 Exhibit 19, which is the revised budget.

10 AV TECHNICIAN: One second. Exhibit 19.

11 (Document displayed.)

12 Q This document was provided to HC's counsel  
13 yesterday; is that correct, Mr. Mardiks?

14 A Yes.

15 Q But this wasn't the first budget that was  
16 ever sent to them, was it?

17 A No, no.

18 Q So if there's some confusion, it wasn't as  
19 if the Debtor just for the first time yesterday asked  
20 to have these things paid?

21 A It goes back to at least September.

22 Q Thank you.

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1 MR. SHER: I want to now have the witness  
2 look at what we marked yesterday as No. 14.

3 AV TECHNICIAN: One second.

4 For the record, this is going to be  
5 Exhibit 23.

6 (Exhibit 23 was marked for identification  
7 and is attached to the transcript.)

8 Q This was provided to the Debtor yesterday,  
9 was it not, Mr. Mardiks?

10 A Correct, it was.

11 Q Ms. Willis had some questions about whether  
12 or not there were expenses that -- whether or not HC  
13 paid for all of the services that were rendered during  
14 the transition period. Do you remember --

15 A I do remember that.

16 Q And I think you thought -- answered her  
17 question that they had, in fact, paid for all of the  
18 expenses that we believe were due under the TSA.

19 A Yeah, I think I said it was likely, yes.

20 Q Okay. Well, let's go through this list.  
21 Had they -- have they paid the monthly fees of 25,000  
22 a month?

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1 A That's right, they have not.

2 Q Have they paid the U.S. Trustee fees?

3 A No, they have not.

4 Q Do you remember who Stanton was?

5 A Stanton was a public relations firm that was  
6 used by Ratner Companies, and subsequently by HC  
7 during the transition.

8 Q And did Stanton do press releases related to  
9 the sale of the assets to HC?

10 A Yes.

11 Q And do you recall whether or not HC reviewed  
12 and approved the press releases before they went out?

13 A Absolutely did.

14 Q Has HC paid for Stanton's fee, \$30,000?

15 A No.

16 Q Okay. Putting aside whether or not the --  
17 they agree or not agree, has HC paid all the fees and  
18 expenses of Carl Marks that were accrued?

19 A No, they haven't.

20 Q Have they paid all the fees of my law firm  
21 that were accrued?

22 A I know they haven't.

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1 Q Have they paid for Littler's work --

2 A They haven't.

3 Q -- in regard to negotiating the TSA and the  
4 Sale Order?

5 Let's talk about W-2s for a moment. The  
6 W-2s that the Debtor is sending out, is it W-2s that  
7 have to go out to both -- to all of the Debtors'  
8 employees?

9 A It's all employees.

10 Q And is it also those employees who HC now  
11 has hired?

12 A Yes, those who are -- yes, it would include  
13 those.

14 Q And so the Debtor has to issue W-2s to HC's  
15 own employees, correct?

16 A Correct.

17 Q And that is in the wind down budget, is it  
18 not?

19 A Yes, it is.

20 Q Has HC agreed to pay for that?

21 A Well, I think they did agree to pay for it.

22 Q Well, did they pay for it?

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1 A No, they did not pay for it.

2 Q Okay. By the way, when you gave HC, and  
3 when we delivered the budgets to HC, was that our  
4 request that they fund all the expenses under the wind  
5 down?

6 A Well, I mean it was -- I don't know what was  
7 requested of them at that moment, but that -- it was  
8 requested of them in that they do fund the wind down.

9 MR. SHER: Let's take this down. I want to  
10 show you what was -- what I think I sent up yesterday  
11 as No. 3.

12 AV TECHNICIAN: For the record, Exhibit 24.

13 (Exhibit 24 was marked for identification  
14 and is attached to the transcript.)

15 Q And this, sir, is a copy of a wire transfer  
16 to my law firm from HC Salon Holdings. Have you seen  
17 this before?

18 A I saw -- I think I've seen this recently.  
19 Looking for a date on it.

20 Q It's dated --

21 A It's in September. I see it.

22 Q Okay. This -- you were aware that HC was

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1 paying my law firm's legal fees?

2 A Yes.

3 Q And are you also aware that they have ceased  
4 paying my law firm?

5 A Yes, I'm aware of that, both.

6 Q And this was paid after the termination,  
7 supposed termination of the TSA?

8 A This was September 28th, after the  
9 termination of the TSA on September 4.

10 Q Okay. Why don't we go back to just the Sale  
11 Order, and the TSA -- the APA and the Sale Order. And  
12 the Sale Order is -- hold on.

13 MR. SHER: I'm sorry. Exhibit 16, let's put  
14 that back up on the screen.

15 AV TECHNICIAN: Give me one second.

16 (Document displayed.)

17 AV TECHNICIAN: Okay, Exhibit 16.

18 MR. SHER: And I am going to go try and find  
19 it, so just stay with me for a second, please.

20 Q I'd like to turn your attention to Section  
21 2.3 of the Sale Order. You see that? Take -- you can  
22 take a quick review of this provision, please. You

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1 don't have to read it into the record.

2 A Okay. Yes, I've read it.

3 Q In preparing for this deposition today, did  
4 you review any documents that discussed the intent of  
5 the hundred-thousand-dollar cash, quote, to fund the  
6 wind down?

7 A There were, there were numerous emails and  
8 revisions and -- to the --

9 Q Do you recall emails with the Creditors  
10 Committee concerning this issue?

11 A Yes, I do.

12 Q And what is your -- what do the records of  
13 the Debtors show the Committee was asking for?

14 A There was a tradeoff between this amount and  
15 some four to \$500,000 from rents, and the Creditors  
16 Committee attorneys wanted to make sure that they were  
17 covered and that, I believe, what -- was the genesis  
18 of this \$100,000.

19 Q One second. I'm going to show you what we  
20 marked yesterday as No. 7.

21 (Exhibit 25 was marked for identification  
22 and is attached to the transcript.)

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1 MR. SHER: And you can also put No. 8 up at  
2 the same time from yesterday.

3 AV TECHNICIAN: Oh, you want No. 8 as well?

4 MR. SHER: Yes, sir.

5 AV TECHNICIAN: Okay. One second.

6 (Exhibit 26 was marked for identification  
7 and is attached to the transcript.)

8 AV TECHNICIAN: No. 8 is going to be, for  
9 the record, Exhibit 25 -- I'm sorry, No. 7, Document  
10 No. 7 is Exhibit 25, and 8 is Exhibit 26.

11 Q Look at 25 first, which is an email dated  
12 Sunday, May 17 from Mr. Chesley to myself.

13 AV TECHNICIAN: And you have access now,  
14 sir.

15 Q And please take a look at the Exhibit  
16 attached to the email. Do you see the reference there  
17 to the wind down budget?

18 A Yes, I do.

19 Q And does this refresh your recollection,  
20 what was the original intention of this, quote, wind  
21 down budget?

22 A It was at the point in time when we didn't



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1 know what the wind down would entail. It was to  
2 fund --

3 Q I'm asking about this particular term sheet,  
4 sir. What was the intention of this term sheet of the  
5 budget?

6 A Okay. It was for the Committee.

7 Q And was the Committee asking for money for  
8 their legal fees at this time?

9 A I mean that was what, essentially what the  
10 Committee wanted to cover, I know that. But it's a  
11 wind down budget of 175, which amount the Committee in  
12 consultation with the Debtors shall utilize in  
13 furtherance of their fiduciary obligations.

14 Q Look at the next Exhibit.

15 MR. SHER: I lost track.

16 AV TECHNICIAN: 26.

17 Q And this is an email from Mr. Costa to  
18 Mr. Chesley and me, and read the last paragraph.

19 A You will notice -- you want me to read it  
20 into the record?

21 Q No, please don't read it into the record, I  
22 want you to read it.

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1 A All right. Okay, I will.

2 Q A moment ago I think you mentioned a  
3 tradeoff. Was this the tradeoff you were talking  
4 about?

5 A Yes, this is.

6 Q So the Committee was basically trading off  
7 some of their fees to cover the stub rent for the  
8 landlords?

9 A Correct.

10 Q Lastly I want to show you what I marked as  
11 Exhibit 9 yesterday -- not lastly, let me say that.

12 (Exhibit 27 was marked for identification  
13 and is attached to the transcript.)

14 AV TECHNICIAN: Exhibit 27 for the record.  
15 Thank you.

16 Q Exhibit 27, I will state for the record  
17 these are the budgets that were attached to the three  
18 orders approving the DIP. Without encumbering this  
19 proceeding with too many pages, I just took the last  
20 page off.

21 I want to turn your attention to the very  
22 last budget, Page 3 of 3.

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1 AV TECHNICIAN: You have access, sir.

2 Q You see there's 75,000 there for UCC  
3 advisor?

4 AV TECHNICIAN: You want No. 3?

5 I'm sorry, let me help you.

6 Q Page 3 of 3.

7 A This is it.

8 What am I looking for now?

9 Q In Professional Fees and Costs do you see  
10 fees and costs that are being funded under the DIP,  
11 such as \$350,000?

12 A Okay, there I am.

13 Okay. Yeah.

14 Q And you saw -- a moment ago we saw the  
15 beginning of the negotiations over the 100 -- the  
16 Committee wanted 175 and then traded down to 100,  
17 correct?

18 A Yes.

19 Q And you see now they pick up the 75 they  
20 traded away in the third DIP Order, correct?

21 A There it is, yes.

22 Q And this is dated 5/28/20, is it not?

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1 A I don't see the date.

2 Q It's on the top of the page.

3 AV TECHNICIAN: Right there.

4 A That is the date.

5 MR. SHER: Okay, one minute just to see if I  
6 have any more questions.

7 Mark as exhibit -- what I gave you as  
8 Exhibit 20.

9 AV TECHNICIAN: I'm sorry, you cut out.

10 MR. SHER: What I marked yesterday as 20.

11 AV TECHNICIAN: Okay, one second.

12 For the record, Exhibit 28.

13 (Exhibit 28 was marked for identification  
14 and is attached to the transcript.)

15 Q Have you seen this before, Mr. Mardiks?

16 A I have.

17 Q Who's Ms. Hodges?

18 A Pardon me? What about Ms. Hodges?

19 Q Who was Liz Hodges?

20 A Oh. Senior Vice President of marketing  
21 essentially. She had -- her title was slightly  
22 different, but that was her role, marketing.

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1 Q And a few moments ago we talked about  
2 \$30,000 that was due to Stanton that hasn't been paid.  
3 Is this the invoice that is referenced?

4 A That's the invoice.

5 Q And this is for work done between March 25th  
6 and June 6th, correct?

7 A Yes.

8 Q And this is regarding press releases  
9 associated with the transition to HC, correct?

10 A That's correct.

11 MR. SHER: One moment, please.

12 No further questions at this time.

13 AV TECHNICIAN: Does anybody else have  
14 questions or follow-up questions?

15 MS. WILLIS: Kevin, did you want to just  
16 take a two-minute break to discuss --

17 MR. KOBBE: Yeah, happy to do so.

18 Why don't we reconvene at 12:40, and at that  
19 point we can talk about the timing for the afternoon  
20 deposition as well.

21 (A recess was taken at 12:34 p.m.)

22 (Back on the record at 12:41 p.m.)

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1 MS. WILLIS: Back on the record.

2 We have no further questions of this  
3 witness, and we will resume the deposition at 1:45  
4 p.m. Eastern time with questioning of Mr. Jacobson.

5 AV TECHNICIAN: Off the record now.

6 (Off the record at 12:42 p.m.)

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## 1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2  
3 I, Dawn M. Hart, the officer before whom the  
4 foregoing deposition was taken, do hereby certify that  
5 the foregoing transcript is a true and  
6 correct record of the testimony given; that said  
7 testimony was taken by me stenographically and  
8 thereafter reduced to typewriting under my direction;  
9 that reading and signing was waived; and that I am  
10 neither counsel for, related to, nor employed by any  
11 of the parties to this case and have no interest,  
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my notarial seal this 20th day  
15 of January, 2021.

16 My commission expires:

17 January 2, 2025

18  
19 

20 \_\_\_\_\_  
21 NOTARY IN AND FOR THE  
22 STATE OF MARYLAND

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